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Petitioner in Propria Persona

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL DAVID GUTIERREZ,
Petitioner in Propria Persona,
vs.

JAMES A. YATES, WARDEN,
DEPARTMENT OF CORRECTIONS,
PLEASANT VALLEY STATE
PRISON,
Defendants.

CASE NO. 5:07-C-03668-RMW

**TRAVERSE OF PETITIONER
MICHAEL DAVID GUTIERREZ TO
RESPONDENT'S ANSWER TO ORDER
TO SHOW CAUSE**

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COMES NOW, Petitioner in Pro Per, MICHAEL DAVID GUTIERREZ pursuant to U. S.C. § 2254 and submits the following traverse in reply to Respondent's Response to Order to Show Cause why the writ of habeas corpus should not be granted.

I. INTRODUCTION

On November 23, 2004, a jury returned verdicts against Petitioner on weapon use and infliction of great bodily injury. Both parties waived their rights to a jury trial of the prior-conviction allegations.

On December 6, 2004, the District Attorney's motion to dismiss the prior-conviction allegations under California Penal Code § 667.5 was granted, and the court found the remaining prior-conviction allegations to be true.

1 On February 17, 2005, the court sentenced petitioner to state prison for a term of
 2 twenty-six years, consisting of eighteen years for double the upper term for count one,
 3 plus three years for the bodily-injury enhancement, plus five years for the prior-conviction
 4 enhancement. A sentence of six years for double the midterm for count two was imposed
 5 concurrently.

6 Petitioner appealed his state court conviction and on November 20, 2006, the
 7 California Court of Appeal, Sixth Appellate District, in Case No. H028515, *People v.*
 8 *Gutierrez* and conditionally affirmed the judgment noting that:

9 *The judgment is affirmed. The trial court is directed to*
 10 *correct the abstract of judgment to reflect that the*
 11 *enhancement on count 2 under Penal Code section 12022.7*
 12 *is stayed. (not published) (Rushing, P.J.; We concur:*
 13 *Premo, J., Elia, J.) Petitioner's*

14 Petitioner's Exhibit "A"

15 Petitioner appealed the Appellate District's decision to the California Supreme
 16 Court, (Case No. S149143) and on February 7, 2007, the California Supreme Court denied
 17 petitioner's petition for review.

18 Petitioner's Exhibit "B"

19 Petitioner is presently being held in state custody after sustaining criminal
 20 convictions in a California state court for weapon use and infliction of great bodily injury.
 21 Petitioner has exhausted his state court remedies in accordance with 28 U.S.C. §
 22 2254(b)(1)(A) and timely challenges the validity of his state court conviction on the
 23 following grounds:

24 Petitioner asserts that his state court conviction violated federal law, the United
 25 States Constitution, United States Supreme Court case law and was denied adequate legal
 26 representation in the trial court phase.

27 In light of the substance of the claims in this petition, the factual record and
 28 applicable law, petitioner's constitutional claims deserve a more thorough and reasoned

1 review by the federal courts than the cursory rubber-stamping of the California Supreme
2 Court's decision that Respondent advocates.

3 Because of the nature of Respondent's argument opposing habeas relief, the focus
4 of this traverse will be based upon whether petitioner can establish that the California
5 decision was contrary to, or involved an unreasonable application of existing Supreme
6 Court precedent or, alternatively, was based upon an unreasonable determination of the
7 facts necessary to entitle him to habeas relief under 28 U.S.C. §2254(d) of AEDPA.

8 **II. PETITIONER'S FIRST CLAIM FOR RELIEF**

9 **A. Petitioner Asserts That His Sixth and Fourteenth Amendment Rights** 10 **Were Violated in that he was Denied the Opportunity to Confront the** 11 **Adverse Witnesses Against Him**

12 In claim one, petitioner contends that his federal constitutional right to due process
13 was violated when the trial court improperly allowed the testimony that Mr. Lionetti had
14 identified petitioner in person, in a one-person show up at the hospital, which was
15 erroneously admitted over objection in violation of his right to confrontation.

16 Respondent relies on *Crawford v. Washington* 541 U.S. 36 (2004) in support of his
17 position. However, in *Crawford supra*, the Supreme Court *increased* the scope of the
18 confrontation clause in trials. Justice Scalia's opinion made any "testimonial" out-of-court
19 statements *inadmissible* if the accused did not have the opportunity to cross-examine that
20 accuser, meaning any statements that an objectively reasonable person in the declarant's
21 situation would have deemed likely to be used in court. The most common application of
22 this would come after a declarant made a statement to a police officer, and then that
23 officer testifies about that statement at trial which is similar to what occurred in
24 Petitioner's case.

25 The Supreme Court in *Crawford* drew a sharp distinction between what it called
26 "testimonial" and "nontestimonial" evidence. *Id.*, at 68. The Georgetown Law Journal,
27 interpreting *Crawford*, said "a statement is testimonial when, in the totality of
28 circumstances, police interrogation is not in response to an ongoing emergency, but rather

1 to investigate past events potentially relevant to criminal proceedings. The Court held that
 2 the admission of a ‘testimonial’ hearsay statement violates the Confrontation Clause
 3 unless the declarant is unavailable and the defendant had a prior opportunity to cross-
 4 examine the declarant. The Supreme Court has held that if the hearsay statement is
 5 ‘nontestimonial,’ the Confrontation Clause does not apply and admissibility is governed
 6 by the applicable jurisdiction’s rules of evidence.” *See, Davis v. Washington*, 126 S.Ct.
 7 2266, 2273-74 (2006).

8 The root of the Confrontation Clause rest in the constitutional premise that “face-
 9 to-face confrontation enhances the accuracy of factfinding by reducing the risk that a
 10 witness will wrongfully implicate an innocent person.” *See, Maryland v. Craig*, 497 U.S.
 11 836 (1990). As the Supreme Court observed in *Coy v. Iowa*, 487 U.S. 1012 (1988) “It is
 12 always more difficult to tell a lie about a person ‘to his face’ than ‘behind his back’.”

13 The U.S. Supreme Court has been fairly consistent in its desire to keep the Sixth
 14 Amendment confrontation right constitutionally viable. For example, in *Olden v.*
 15 *Kentucky*, 488 U.S. 227 (1988) (per curiam) in a kidnapping/rape case found a Sixth
 16 Amendment violation because the defendant was not permitted to cross-examine the
 17 victim about cohabitation with a boyfriend. *Id.*, at 231. *See also: Davis v. Alabama*, 415
 18 U.S. 308, 316-17 (1974) [confrontation right violated when defendant not allowed to
 19 cross-examine witness about possible bias which may have led to a misidentification of
 20 the defendant].

21 The federal circuits have been equally circumspect in their desire to protect the
 22 core values of the Confrontation Clause. The Second Circuit in *Henry v. Specked*, 22 F.3d
 23 1209 (2nd Cir. 1994) found a Sixth Amendment violation when the trial court refused to
 24 allow cross-examination of a child witness about possible biases. *Id.*, at 1214-15. The
 25 Seventh Circuit found a Confrontation Clause violation after the trial court prevented a
 26 defendant from cross-examining a rape victim about a prior false rape claim because the
 27 testimony would have demonstrated a motive for lying. *See, Richmond v. Kingston*, 240
 28 F.3d 590, 591-02 (7th Cir. 2001). *See also: United States v. Platero*, 72 F.3d 806, 816

1 (10th Cir. 1995) [Sixth Amendment violation when defendant refused opportunity to
2 question sexual assault victim about sexual relationship with third party which could have
3 formed the basis for a false allegation against defendant].

4 Federal and state prosecutors often try to shield its witnesses from testifying about
5 investigatory reports by saying they are classified or business records. The Eleventh
6 Circuit in *United States v. Baptista-Rodriguez*, 17 F.3d 1354 (11th Cir. 1994) found a
7 Confrontation Clause violation when the trial court prohibited a defendant from
8 questioning an FBI agent about the contents or existence of a classified document which
9 purportedly revealed the termination of the defendant's relationship with the FBI and the
10 appeals court found this evidence relevant to the defense. *Id.*, at 1366-67.

11 Significantly, the Confrontation Clause does not bar the admission of out-of-court
12 statements provided the person making the statement testifies at trial and is subject to full
13 cross-examination concerning the prior statements. *See, California v. Green*, 399 U.S.
14 149, 158 (1970).

15 The far-fetched notion as put forth by Respondent that Mr. Lionetti's short term
16 memory was affected, yet he was supposedly able to remember critical details of his
17 attack, including the fact that he identified plaintiff as his attacker in the emergency room,
18 but was unable identify Petitioner at trial as his attacker, seems highly implausible.

19 Petitioner seeks redress of the following suspect practices for a determination as to
20 whether they comport with the Constitution and established law:

21 1. Did the "one-man show-up" to which Petitioner was subjected violate his
22 due process rights or cause substantial prejudice?

23 2. Did the trial court err in allowing prejudicial and hearsay statements to be
24 admitted into evidence during Petitioner's trial? and

25 3. Was Petitioner's denial of his Constitutional right to confront such witnesses
26 against him violated?

27 Considering the lack of physical evidence at the crime scene tying to Petitioner to the
28 crime, Respondent singularly relies on a substandard witness identification process and

1 the testimony of a witness who was heavily sedated at the time that he identified
2 Petitioner as his assailant. These details, when juxtaposed against the fact that the witness
3 failed to identify Petitioner as his assailant at trial, combined Petitioner's denial of his
4 right to confront adverse witnesses against him, cry out for relief from this court.

5 **III. PETITIONER'S SECOND CLAIM FOR RELIEF.**

6 **A. Petitioner Asserts That His Sixth and Fourteenth Amendment Rights**
7 **Were Violated in that he was Denied the Right to Present a Defense**

8 During his criminal proceeding, Petitioner was denied the opportunity to cross-
9 examine a critical witness who could corroborate the fact that the victim, Anthony John
10 Lionetti failed to positively identify Plaintiff as the person who assaulted him. Shortly
11 after Petitioner was detained on suspicion of the assault, Police escorted Petitioner to the
12 hospital where Mr. Lionetti was being treated. A nurse brought the Mr. Lionetti out in a
13 wheelchair for the purpose of attempting to identify the Plaintiff as his attacker. Plaintiff
14 contends that the nurse will support Petitioner's contention that Mr. Lionetti failed to
15 positively identify him as his attacker, irrespective of the assertions made in Respondent's
16 Answer to the contrary.

17 The defendant must also be permitted to call witnesses in his favor. If such
18 witnesses refuse to attend, they may be compelled to do so by the court at the request of
19 the defendant. *United States v. Cooper*, 4 U.S. 341 (1800)

20 A defendant, under the Sixth Amendment, must have an opportunity to "confront"
21 and cross-examine witnesses. The Confrontation Clause relates to the common law rule
22 preventing the admission of hearsay. The rationale was that a defendant had no
23 opportunity to challenge the credibility of and cross-examine the person actually making
24 the statements. Nevertheless, the Supreme Court has held that the hearsay rule is not
25 exactly the same as the confrontation clause; hearsay may, in some circumstances, be
26 admitted though it is not covered by one of the long-recognized exceptions; for example,
27 prior testimony may sometimes be admitted if the witness is unavailable.

28 During his trial, Petitioner made number requests of his first public defender to

1 subpoena the nurse that was present when Mr. Lionetti allegedly identified Petitioner as
2 his assailant. Petitioner's public defender instead attempted to pressure Petitioner into
3 entering a plea agreement and never subpoenaed the nurse as Petitioner had requested.

4 Petitioner most recently served a subpoena on the San Jose Police Department,
5 (Petitioner's Exhibit "C") specifically requesting the names of the doctors and nurses who
6 were present during the identification process, however, the San Jose Police Department
7 failed to provide Petitioner with such records and as such, Petitioner's due process rights
8 have been and continue to be violated in that is unable to confront witnesses who could
9 bolster his claims for relief.

10 **B. Petitioner's Due Process Rights Under the Fifth and Fourteenth**
11 **Amendments were Violated in That He Suffered Substantial Prejudice**
12 **as a Result of the Ersatz Procedure Utilized to Conduct the Witness**
13 **Identification "Show Up"**

14 As opposed to the customary, more objective police multi-person "line-up"
15 procedure used during most police investigations, Petitioner was subjected to the more
16 biased "one-man show-up" procedure conducted at the hospital where Mr. Lionetti was
17 being treated for his injuries. To prevent diminished or destroyed witness credibility and
18 the reduction of the identification's evidentiary value, many law enforcement agencies
19 have instituted procedures and practices designed to lessen line up bias. Court's have
20 specifically addressed the issue of what are termed one-man show-ups.

21 As is standard protocol for any type of line-up, no video tape was taken of the one-
22 man show-up to which Petitioner was subjected, no admonitions were given to the witness
23 (Mr. Lionetti) advising him that Petitioner could or could not be the suspect, nor does it
24 appear that the witness provided any type of *written* description of his assailant to police
25 prior to the one-man show-up.

26 Under the most basic of police procedures, if a suspect is detained for questioning
27 and the witness has not lost sight of the suspect, then it is appropriate to conduct a single-
28 person "show-up" for the purpose of ascertaining positive identification. If, however, an
appropriate amount of time has elapsed and the witness has lost sight of the suspect, then

1 the appropriate protocol would be to establish a standard, multi-person line-up, which in
2 Petitioner's case never occurred.

3 Petitioner asserts that he suffered substantial prejudice in that his photo was not
4 among those shown to Mr. Lionetti in the six-photo lineup. Instead, Petitioner was
5 brought to the emergency room in handcuffs, and paraded in front of Mr. Lionetti for a
6 one-man show-up.

7 In *Johnson v. Dugger*, 817 F.2d 726, (11th Cir. 1987), the court stated:

8 Although "show-ups are widely condemned, . . . immediate
9 confrontations allow identification before the suspect has
10 altered his appearance and while the witnesses' memory is
11 fresh, and permit the quick release of innocent persons. . .
12 Therefore, show-up are not unnecessarily suggestive unless
13 the police aggravate the suggestiveness of the confrontation at
14 817 F.2d at 729.

15 *Johnson supra*, however, most likely envisioned a witness that was not in a heavily
16 sedated state as was the witness in Petitioner's case and as will be discussed in more detail
17 further in Petitioner's Traverse.

18 In *Neil v. Biggers*, 409 U.S. 188, the court stated:

19 We hold that each case must be considered on its own facts,
20 and that convictions based on eyewitness identification at trial
21 following a pretrial identification by photograph will be set
22 aside on that ground only if the photographic identification
23 procedure was so impermissibly suggestive as to give rise to a
24 very substantial likelihood of irreparable misidentification.

25 In Petitioner's case, the investigating officer, Sergeant Overstreet, noticed
26 similarities, between the description that Lionetti gave of the suspect at the scene and at
27 the hospital, to another suspect who had eluded officers the day before named Michael
28 Mestez. A six-photo lineup containing Mestez's photo, but not Petitioner's photo, was

1 assembled and shown to Lionetti at about 2 a.m. in the emergency room. Lionetti
2 apparently did not recognize anybody in the photo lineup. (Respondent's Memo of
3 Points and Authorities at page 5, Lines 5-9)

4 Petitioner asserts that by he suffered substantial prejudice by being presented to
5 Mr. Lionetti in the one-man show-up particularly when, for whatever reason, the alleged
6 "line-up" initially shown to Mr. Lionetti did not contain Petitioner's picture.

7 **C. Mr. Lionetti's Heavily Sedated Condition Should Have Precluded Him**
8 **from Participating in the One-Man Show-Up Witness Identification**
9 **Procedure and any Evidence Gleaned from Said One-Man Show-Up**
10 **Should Have Been Disallowed at Trial. As a Result, Petitioner was**
11 **Denied Due Process under the Fifth and Fourteenth Amendments to the**
12 **U. S. Constitution**

13 While Respondent assert that Mr. Lionetti positively identified Petitioner as his
14 assailant, Respondent attempts to downplay the fact that Mr. Lionetti was under the
15 influence of substantial amounts of extremely powerful sedatives at the time that he made
16 such alleged "positive identification". By minimizing the side effects of the cocktail of
17 narcotics that Mr. Lionetti was under at the time that he was asked to make a positive
18 identification, Respondent make a mockery of the notion that a person under the influence
19 of such powerful drugs can responsibly be relied upon to make cognizant decisions,
20 particularly one that has now cost Petitioner a 25-year prison sentence. (Respondent's
21 Memo of Points and Authorities at page 4, lines 14-18 and page 7, lines 18-20)

22 According to the medical records, Lionetti was admitted to the emergency room at
23 1:10 a.m. At 1:20 a.m. he was given Tetanus vaccine and two milligrams of morphine
24 sulfate. At 1:30 a.m. he was given an additional two milligrams of morphine sulfate. At 2
25 a.m. he was given an additional four grams of morphine sulfate. Thus, he was given a total
26 of eight milligrams of morphine sulfate in less than one hour. He was also given thirty
27 milligrams of Toradol, a pain medication, at 2:18 a.m. (Respondent's Memo of Points
28 and Authorities at page 7, lines 12-17).

Respondent acknowledges that Mr. Lionetti was sedated at the time that he was
asked to identify his assailant but rationalizes his decision to go forward with the one-man

1 show-up by stating that “The treating physician did not notice anything to suggest that
2 Lionetti was experiencing hallucinations, blurred vision, or memory deficit. Lionetti
3 passed a test for memory deficit with the same standard as would apply to his treating
4 physician or the prosecuting attorney.” Thus, by making these assertions, Respondent
5 was acutely aware that the drugs that Mr. Lionetti had been administered had the potential
6 to cause critical physical impairments to sensory functions necessary for Mr. Lionetti to
7 make a positive identification of his assailant.

8 Respondent further admits that possible side effects of morphine sulfate are
9 sensation of drunkenness, *blurred or double vision* [emphasis added], and disorientation.
10 ((Respondent’s Memo of Points and Authorities at page 7, lines 17-18). Respondents’
11 answer, however, fails to cite the fact that Toradol (of which Mr. Lionetti was
12 administered 30 milligrams shortly before he was asked to make an identification) can
13 also have similar side effect that include: dizziness, drowsiness, hallucinations, unusual
14 thinking, *problems with vision, included blurred vision*. Respondents disingenuous
15 statement that “Nothing in the medical records indicates that Lionetti suffered any side
16 effects in the emergency room that night” is nothing more than conjecture and wishful
17 thinking on Respondents’ part and lacks any form of forensic medical support from a
18 medical professional to back this claim.

19 Indeed, **Respondents readily admit that Mr. Lionetti failed to positively**
20 **identify Petitioner as his assailant at the time of trial.** (Respondent’s Memo of Points
21 and Authorities at page 7, Lines 4-5). Respondent, however attributes Mr. Lionetti’s
22 inability to identify Petitioner at trial because [Mr. Lionetti] “was sedated and given
23 psychotropic medication to induce a coma so that he could endure the treatment he
24 received. When he regained consciousness months later, his short term memory was
25 affected. By the time of trial he could remember much of what happened to him on
26 January 7, 2004. Lionetti was truthful, accurate, and honest in recounting the events at the
27 scene and at the emergency room that night. He remembered that he had identified his
28 assailant at the emergency room, *but could not identify petitioner as his assailant at trial.*”

1 [emphasis added].

2 The far-fetched notion as put forth by Respondent that Mr. Lionetti's short term
3 memory was affected, yet he was supposedly able to remember critical details of his
4 attack, including the fact that he identified plaintiff as his attacker in the emergency room,
5 but was unable identify Petitioner at trial as his attacker, seems highly implausible. Given
6 the suspect nature of the manner in which the witness identification process occurred, Mr.
7 Lionetti's failure to positively identify Petitioner as his attacker and the lack of physical
8 evidence pointing to Petitioner as Mr. Lionetti's assailant, Respondent's singularly relies
9 on the testimony of a witness who was heavily sedated as the basis for imposing such a
10 draconian sentence on Petitioner.

11 **D. Physical Evidence That Could Have Exonerated Petitioner Was Either**
12 **Suppressed or Ignored Altogether Denying Plaintiff a Right to a Fair**
13 **Trial in Violation of the Sixth Amendment to the Constitution.**

14 The right to confront and cross-examine witnesses also applies to physical
15 evidence; the prosecution must present physical evidence to the jury, providing the
16 defense ample opportunity to cross-examine its validity and meaning. Prosecution
17 generally may not refer to evidence without first presenting it.

18 The lack of physical evidence coupled with Mr. Lionetti's inability to identify
19 Petitioner at trial as his attacker mandates that the Court grant the relief Petitioner seeks.
20 Respondent admits that Petitioner's fingerprints and for that matter any other forensic
21 evidence linking Petitioner to the crime were found in the cab. Mr. Lionetti testified that
22 the person who assaulted him urinated near a tree, yet such urine was never collected and
23 if so, it was not presented in court for the purpose of prosecuting or exonerating
24 Petitioner.

1 **IV. PETITIONER'S THIRD CLAIM FOR RELIEF**

2 **A. Petitioner Asserts That the Cumulative Errors Substantially Prejudiced**
 3 **Petitioner's Right to a Fair Trial in Violation of His Sixth Amendment**
 4 **Rights**

5 Petitioner contends that his federal constitutional right to due process was
 6 violated when the trial court improperly allowed the testimony that Mr. Lionetti had
 7 identified petitioner in person, in a one-person show up at the hospital, which was
 8 erroneously admitted over objection in violation of his right to confrontation.

9 Respondent relies on *Crawford v. Washington* 541 U.S. 36 (2004) in support of his
 10 position, yet in *Crawford supra*, the Supreme Court *increased* the scope of the
 11 confrontation clause in trials. Justice Scalia's opinion made any "testimonial" out-of-court
 12 statements *inadmissible* if the accused did not have the opportunity to cross-examine that
 13 accuser, meaning any statements that an objectively reasonable person in the declarant's
 14 situation would have deemed likely to be used in court. The most common application of
 15 this would come after a declarant made a statement to a police officer, and then that
 16 officer testifies about that statement at trial which is similar to what occurred in
 17 Petitioner's case.

18 The Supreme Court in *Crawford* drew a sharp distinction between what it called
 19 "testimonial" and "nontestimonial" evidence. *Id.*, at 68. The Georgetown Law Journal,
 20 interpreting *Crawford*, said "a statement is testimonial when, in the totality of
 21 circumstances, police interrogation is not in response to an ongoing emergency, but rather
 22 to investigate past events potentially relevant to criminal proceedings. The Court held that
 23 the admission of a 'testimonial' hearsay statement violates the Confrontation Clause
 24 unless the declarant is unavailable and the defendant had a prior opportunity to cross-
 25 examine the declarant. The Supreme Court has held that if the hearsay statement is
 26 'nontestimonial,' the Confrontation Clause does not apply and admissibility is governed
 27 by the applicable jurisdiction's rules of evidence." *See, Davis v. Washington*, 126 S.Ct.
 28 2266, 2273-74 (2006).

1 The root of the Confrontation Clause rest in the constitutional premise that “face-
 2 to-face confrontation enhances the accuracy of factfinding by reducing the risk that a
 3 witness will wrongfully implicate an innocent person.” *See, Maryland v. Craig*, 497 U.S.
 4 836 (1990). As the Supreme Court observed in *Coy v. Iowa*: “It is always more difficult to
 5 tell a lie about a person ‘to his face’ than ‘behind his back’.” 487 U.S. 1012 (1988).

6 The U.S. Supreme Court has been fairly consistent in its desire to keep the Sixth
 7 Amendment confrontation right constitutionally viable. For example, in *Olden v.*
 8 *Kentucky*, 488 U.S. 227 (1988) (per curiam) in a kidnapping/rape case found a Sixth
 9 Amendment violation because the defendant was not permitted to cross-examine the
 10 victim about cohabitation with a boyfriend. *Id.*, at 231. *See also: Davis v. Alabama*, 415
 11 U.S. 308, 316-17 (1974) [confrontation right violated when defendant not allowed to
 12 cross-examine witness about possible bias which may have led to a misidentification of
 13 the defendant].

14 The federal circuits have been equally circumspect in their desire to protect the
 15 core values of the Confrontation Clause. The Second Circuit in *Henry v. Specked*, 22 F.3d
 16 1209 (2nd Cir. 1994) found a Sixth Amendment violation when the trial court refused to
 17 allow cross-examination of a child witness about possible biases. *Id.*, at 1214-15. The
 18 Seventh Circuit found a Confrontation Clause violation after the trial court prevent a
 19 defendant from cross-examining a rape victim about a prior false rape claim because the
 20 testimony would have demonstrated a motive for lying. *See, Richmond v. Kingston*, 240
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1 questioning an FBI agent about the contents or existence of a classified document which
2 purportedly revealed the termination of the defendant's relationship with the FBI and the
3 appeals court found this evidence relevant to the defense. *Id.*, at 1366-67.

4 Significantly, the Confrontation Clause does not bar the admission of out-of-court
5 statements provided the person making the statement testifies at trial and is subject to full
6 cross-examination concerning the prior statements. *See, California v. Green*, 399 U.S.
7 149, 158 (1970).

8 The far-fetched notion as put forth by Respondent that Mr. Lionetti's short term
9 memory was affected, yet he was supposedly able to remember critical details of his
10 attack, including the fact that he identified plaintiff as his attacker in the emergency room,
11 however was unable identify Petitioner at trial as his attacker, seems highly implausible.
12 Given the suspect nature of the manner in which the witness identification process
13 occurred (as will be discussed later in Petitioner's Traverse), Mr. Lionetti's failure to
14 positively identify Petitioner as his attacker and the lack of physical evidence pointing to
15 Petitioner as Mr. Lionetti's assailant, Respondent's singularly relies on the testimony of a
16 witness who was heavily sedated and whom Petitioner was unable cross-examine at trial
17 for imposing such a draconian sentence on Petitioner.

18 Petitioner was convicted only because the weakness of the state's case was
19 exceeded by his lawyer's inept defense. Respondent now seeks to preserve the conviction
20 of an innocent man by repeatedly insisting that this Court cannot interfere with a judgment
21 even if it was obtained in violation of the Constitution because, under AEDPA, it must
22 defer to a state court that correctly quotes federal law. The Supreme Court has made it
23 very clear that "errors that undermine confidence in the fundamental fairness of the state
24 adjudication certainly justify the issuance of the federal writ," even under AEDPA.
25 *Williams v. Taylor*, 529 U.S. 362, 375 (2000). The Court explicitly held that it would be
26 wrong to "require the federal courts, including this Court, to defer to state judges'
27 interpretations of federal law," *Id.* at 377, because:

28 When federal judges exercise their federal-question

1 jurisdiction under the “judicial Power” of Article III of the
2 Constitution, it is “emphatically the province and duty” of
3 those judges to “say what the law is.” *Marbury v. Madison*, 5
4 U.S. 137, (1803).

5 Thus, 28 U.S.C. § 2254(d)(1) is no impediment to this Court’s power and duty to
6 grant relief in this case. Petitioner’s burden to show that the state court’s rejection of his
7 constitutional claims was “contrary to, or involved an unreasonable application of” clearly
8 established federal law is amply met in this case. The state court imposed on Petitioner, in
9 clear contravention of *Strickland v. Washington*, 466 U.S. 668 (1984), the burden of
10 proving that the testimony and evidence defense counsel had failed to present would
11 “render it impossible that he is the guilty party.” Contrary to Respondent’s suggestion, the
12 Supreme Court has consistently held that “[e]ven in the context of federal habeas,
13 deference does not imply abandonment or abdication of judicial review.” *Miller-El v.*
14 *Cockrell*, 537 U.S. (2003).

15 **V. CONCLUSION**

16 Petitioner prays that the court reverse the state court decisions or in the
17 alternative, grant Petitioner a Trial De Novo.

18 Respectfully submitted,

19 DATED: September 15, 2008 By: /s/MICHAEL DAVID GUTIERREZ
20 Petitioner in Propria Persona

EXHIBIT A

(A-16)

In The Court Of Appeal Of The State Of California

184

Sixth Appellate District

San Jose, California

MONDAY, NOVEMBER 20, 2006

H029590 PEOPLE v. MCKINLEY

The judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment to reflect the imposition of a section 12022, subdivision(b)(1) enhancement, not a section 12022.7, subdivision (a) enhancement, as to Count Two. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed November 20, 2006

H028989 PEOPLE v. BLAN

The judgment is affirmed. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 20, 2006

H029528 CONRAD DELL'OCA, as Trustee, etc., et al. v. UBS SECURITIES LLC

The judgment is affirmed. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 20, 2006

H028515 PEOPLE v. GUTIERREZ

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect that the enhancement on count 2 under Penal Code section 12022.7 is stayed. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 20, 2006

H029369 PEOPLE v. RODRIGUEZ

The judgment is affirmed. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 20, 2006

H029741 ROSENVICK, INC. v. MORTGAGETREE LENDING

The judgment is reversed and the matter is remanded to the trial court with directions to modify the judgment so that the total award to Rosenvick is in the amount of \$25,000. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 20, 2006

H028910 PEOPLE v. WILSON

The judgment is affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)

Filed November 20, 2006

EXHIBIT B

(B-17)

CALIFORNIA APPELLATE COURTS

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Supreme Court

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[Case Summary](#) [Docket](#) [Briefs](#)

[Disposition](#) [Parties and Attorneys](#) [Lower Court](#)

Disposition

PEOPLE v. GUTIERREZ

Case Number [S149143](#)

Only the following dispositions are displayed below: Orders Denying Petitions, Orders Granting Rehearing and Opinions. Go to the Docket Entries screen for information regarding orders granting review.



Case Citation: none

Date	Description
02/07/2007	Petition for review denied

[Click here](#) to request automatic e-mail notifications about this case.

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EXHIBIT C

(C-18 to C-57)

AO88 (Rev. 12/07) Subpoena in a Civil Case

2008 JUN 11 11:40

UNITED STATES DISTRICT COURT
Northern District of California

MICHAEL DAVID GUTIERREZ

SUBPOENA IN A CIVIL CASE

V.
JAMES A. YATES, WARDEN,
DEPARTMENT OF CORRECTIONS,
PLEASANT VALLEY STATE PRISON,

Case Number: 5:07-CV-03668-RMW

TO: SAN JOSE POLICE DEPARTMENT c/o Custodian of Records
201 W. Mission Street
San Jose, CA 91550

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHED EXHIBIT "A"

PLACE	Michael David Gutierrez #V68887 P.V.S.P A-2-150 P. O. Box 8501 Coalinga, CA 93210	DATE AND TIME	8-12-08
-------	---	---------------	---------

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>M. Gutierrez</i>	6-23-08
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

EXHIBIT "A" TO SUBPOENA IN A CIVIL CASE

Any and all police report(s), arrest report(s), case report(s), supplementary report(s), street file(s), list of witnesses and witness statement(s), investigation note(s), photo(s), (including police line up photo(s)), phone record(s), computer record(s), microfiche, digital files, medical report(s), fingerprint analysis, arresting officer report(s) and any and all physical evidence relied upon relating to the arrest of **MICHAEL DAVID GUTIERREZ** (DOB 10-30-65) that occurred on or about January 7, 2004, at or near Virginia Street and King Road and was recorded under San Jose Police Dept. Nos. 04-007-0007 and 04-007-0061 and which relates to the following information or materials:

(1) Taxi dispatch report;

(2) "Conditional Exam" at hospital by Magistrate and D. A. Boyd where victim testified under oath, including but not limited to any records/videos, written or oral statements, photographs, police reports, phone records investigation notes or any other evidence obtained from said Conditional Exam;

(3) List of all doctors and nurses on duty or contracted at the time of the conditional exam and/or hospital show-up or identification.

(3) Notes or any other evidence obtained or produced from court appointed lawyer, Jennifer Hultgrens; and

(4) Any and all "Marsden" records sealed and unsealed.

DECLARATION OF SERVICE BY U. S. MAIL

Gutierrez v. Yates, Case No. C 07-3668 RMW (PR)

I declare:

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

On July 9, 2008, I served the foregoing document described as:

SUBPOENA IN A CIVIL CASE

on the interested parties by U. S. Mail a true copy as follows:

EDMUND G. BROWN JR., Esq.
Attorney General of the State of
California

Attorneys for Respondent


DANE R. GILLETTE., Esq.
GERALD A. ENGLER., Esq.
GREGORY A. OTT., Esq.
ALLEN R. CROWN., Esq.
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5847
Fax: (415) 703-1234

☒ **VIA U.S. MAIL:** 

On July 9, 2008, at , California, I deposited the above described document, with the U.S. postal service with postage thereon fully prepaid and addressed to the parties listed above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed on June 9, 2008 at Coalinga, California.

Robert Mendosa
Type or Print Name


Signature



San José Police Department

Bureau of Technical Services
Operations Support Services Division

DECLARATION OF CUSTODIAN OF RECORDS

Records subpoenaed by: Michael David Gutierrez
Records pertaining to: All records pertaining to Report# 04-007-0007 & 04-007-0061
Title of Case: Michael David Gutierrez vs James A. Yates, Warden,
Department of Corrections, Pleasant Valley State Prison
Date of deposition: 08/12/08

I, the undersigned, being the duly authorized Custodian of Records for the San Jose Police Department and having the authority to certify the records, declare the following:

1. CERTIFICATION OF RECORDS COPIED

- a. The photocopied records submitted are true copies of all the records described in the subpoena.
- b. To the best of my knowledge, all such records were prepared or compiled by the personnel of the above named business in the ordinary course of business at or near the time of the act, condition or event.
- c. No documents have been withheld in order to avoid their being copied. If we have only part of the records described in the subpoena, such records as are now available are provided.

2. CERTIFICATION OF NO RECORDS

- a. Request for photos cannot be provided at this time because of a fee requirement, since there was no payment made, we are not able to provide you with said request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 08/24/08 at San Jose, California.

Print Name Carolyn Galdo PDS II 934N
mjl/declaration (rev. 08/02)

Signature: *Carolyn Galdo*
PDS II 934N

SAN JOSE POLICE DEPARTMENT

I HEREBY CERTIFY THIS TO BE A

TRUE COPY OF THE ORIGINAL

BY: [Signature] 93473

Event Details Report

Run Date: 24 Jul 2008

Page 1 of 4

Event ID

P040070061

DATE: 7/31/08

IDENTIFICATION SECTION

AR

Initial Event Type

215

Final Event Type

215

Supplemental Type

CARJACKING

Case Number

Event Description

Priority

Call Source

2

Event Location

1718 VIRGINIA AV

Location Description

&

Entered	Dispatched	Enroute	Arrived	Closed
07 Jan 2004 02:18	07 Jan 2004 02:19	07 Jan 2004 02:19	07 Jan 2004 02:20	07 Jan 2004 05:44

Complainant

X ANON

Phone

Reporting Area

87

Beat

M4

District

M

Entry Date	Unit ID	Status	Comments
07 Jan 02:18:39	IN	ENTRY	MALE OUTSIDE IFO HERE ACTING CRAZY
07 Jan 02:19:01	IN	SUPP	TXT: ..RP THINKS POSS RELATED TO EVT #P0007...HM, WEARING BLK/WHITE PENDLETON ...
07 Jan 02:19:43	71M2	DISP	#3842 MARCHETTI, DAWN
07 Jan 02:19:43	8319	ASST	#2942 DAYSOG, JOSE
07 Jan 02:19:45	71W2	ASSTER	#3129 VU, SON
07 Jan 02:19:47	IN	SUPP	TXT: ..RP HAS ABSOLUTELY NO FURTHER INFO..DOES NOT WANT CONTACT
07 Jan 02:20:08	76W1	ASSTER	#3130 SPRANKLE, DONALD
07 Jan 02:20:08	8319	ONSCNE	IN
07 Jan 02:20:27	71W1	ASSTER	#3861 MATTOCKS, SEAN
07 Jan 02:20:29	71M2	ONSCNE	IN
07 Jan 02:20:57	8359	ASSTER	[1718 VIRGINIA AV ,SJ] #3081 MURRAY, TROY PGR
07 Jan 02:22:31	71W2	ONSCNE	IN
07 Jan 02:24:06	8359	ONSCNE	IN
07 Jan 02:25:00	8319	MISC	,AREA CLEAR..UNITS TO CIR
07 Jan 02:25:07	71W1	CHGLOC	[CIR/1718 VIRGINIA]
07 Jan 02:25:09	76W1	CHGLOC	[CIR/1718 VIRGINIA]
07 Jan 02:25:47	71W2	REMINQ	PERSON,71W2,GUTIERREZ,MICHAEL,,,M,10311965,.....
07 Jan 02:26:43	71W2	MISC	,PFN BYC583 LNAME:GUTIERREZ FNAM:MICHAEL MNAM:DAVID
07 Jan 02:27:08	71W1	ONSCNE	
07 Jan 02:27:08	71W2	MISC	

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BY: 934NDATE: 7/21/08

Event Details Report

IDENTIFICATION SECTION

Run Date: 24 Jul 2008

Page 2 of 4

07 Jan 02:27:25	71W2	REMINQ	PERSON,71W2,GUTIERREZ,MICHAEL,,,M,10301965,,,,,,,,,
07 Jan 02:29:28	71W2	REMINQ	PERSON,71W2,GUTIERREZ,MICHAEL,,,M,10301965,,,,,,,,,
07 Jan 02:30:07	8319	MISC	,CAP AS WELL AS BLK/WHT PENELTON
07 Jan 02:33:37	72W4	ASSTOS	[1718 VIRGINIA AV ,SJ] #3274 MCDONALD, BRIAN #3232 MARTIN, WENDELL
07 Jan 02:37:03	8369	ASSTER	#2854 YOUNG, BRUCE, [REDACTED]
07 Jan 02:39:25	8369	ONSCNE	IN
07 Jan 02:40:54	8399	ASSTER	[1718 VIRGINIA AV ,SJ] #3277 GHEZZI, MICHAEL [REDACTED]
07 Jan 02:41:25	8339	ASSTOS	[1718 VIRGINIA AV ,SJ] #2964 FOSTER, RICHARD PG [REDACTED]
07 Jan 02:42:48	8359	MISC	,C33...SUSP IS LL FRM APT #2
07 Jan 02:43:08	8359	NEWLOC	[1718 VIRGINIA]
07 Jan 02:43:18	8349	ASSTER	[1718 VIRGINIA AV ,SJ] #3183 WASHINGTON, BRYANT 6961757
07 Jan 02:44:11	8329	ASSTER	[1718 VIRGINIA] #3250 DAVIS, KENNETH [REDACTED]
07 Jan 02:44:12	8319	MISC	,PER THE RP, 3 XS ARE IN BACK BEDROOM..SUSP IN FRONT..AND STILL HAS THE KNIFE
07 Jan 02:44:15	72M4	ASSTER	[1718 VIRGINIA AV ,SJ] #3608 JENNINGS, TODD #3607 VAUGHN, JR, RAYMOND
07 Jan 02:44:25	8319	MISC	,SUSP KNOWS PD IS 97
07 Jan 02:44:38	8300	ASSTER	[1718 VIRGINIA] #2525 FERRANTE, BRIAN [REDACTED]
07 Jan 02:45:44	8319	MISC	,PER 2ND RP, SUSP WAS IN A CAB,
07 Jan 02:46:00	76W1	NEWLOC	[LAVONNE-BEHIND ADDRESS] ,01/07/04 02:45:06 TO DW FROM 76W1: SHOW ME ON LA VONNE BEHIND TTHE ADDRESS
07 Jan 02:46:42	8319	MISC	,SUSP KNOWS PD IS 97...NOT WILLING TO COME OUT
07 Jan 02:46:44	8399	ONSCNE	IN
07 Jan 02:46:49	8319	PICKUP	,**MI,SUSP KNOWS PD IS 97...NOT WILLING TO COME OUT MESSAGE SENT TO SUP1
07 Jan 02:47:20	72M4	ONSCNE	IN
07 Jan 02:48:23	5075	ASSTOS	[1718 VIRGINIA] #2694 NGO, PHAN, [REDACTED]
07 Jan 02:48:28	7C10	ASST	[1718 VIRGINIA] #2348 MCLAREN, MICHAEL
07 Jan 02:48:33	7W10	ASST	[1718 VIRGINIA] #2202 OVERSTREET, JAMES
07 Jan 02:48:51	8349	ONSCNE	IN
07 Jan 02:49:43	8329	ONSCNE	IN
07 Jan 02:51:03	71M3	ASSTER	[CIR/1718 VIRGINIA] #3826 YBARRA, MARCO
07 Jan 02:51:53	8319	MISC	,STILL IN FRONT LIVING ROOM, TALKING TO RP
07 Jan 02:52:20	8300	ONSCNE	IN
07 Jan 02:52:21	7C10	ONSCNE	IN
07 Jan 02:53:17	8359	MISC	,XS AND MALE JUST CAME
07 Jan 02:53:28	8319	MISC	,LOST LL CNT
07 Jan 02:53:40	7W10	ONSCNE	IN
07 Jan 02:56:10	8300	MISC	,TAKING SUBJ 1015 IN THE FRONT
07 Jan 02:57:20	8300	MISC	,C4..SUBJ 1015...HOUSE IS CLEAR
07 Jan 03:00:36	76W1	CLEAR	D/X:01
07 Jan 03:01:53	IN	CROSS	#E040070040
07 Jan 03:07:27	72M4	TRANS	[SJER]

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BY: 93410

2

DATE: 7/31/08

IDENTIFICATION SECTION

Event Details Report

Run Date: 24 Jul 2008

Page 3 of 4

Time	Code	Event	Details
07 Jan 03:08:56	72M4	MISC	,PFN BYC583 LNAME:GUTIERREZ FNAM:MICHAEL MNAM:DAVID [REDACTED]
07 Jan 03:11:39	72M4	TRANSC	IN
07 Jan 03:12:09	71M3	ONSCNE	IN
07 Jan 03:12:13	71W1	CLEAR	D/X:01
07 Jan 03:13:05	8399	NEWLOC	[1746 VOLLMER]
07 Jan 03:13:08	8319	NEWLOC	[1746 VOLLMER]
07 Jan 03:15:55	72M4	TRANS	[PPC]
07 Jan 03:16:06	71M3	CHGLOC	[CPC, [RW]]
07 Jan 03:16:09	71M3	ONSCNE	IN
07 Jan 03:16:41	IN	CROSS	#E040070043
07 Jan 03:16:44	8329	REMINQ	QR.3WAG453.....
07 Jan 03:16:52	8329	CLEAR	D/X:01
07 Jan 03:17:28	IN	MISC	,TECH REQD
07 Jan 03:18:09	8300	CLEAR	D/X:01
07 Jan 03:18:49	7W10	MISC	,****POSS ID ON THE 211 SUSP
07 Jan 03:19:21	8399	REMINQ	4JXS781..A
07 Jan 03:19:21	8399	REMINQ	LIC,8399,4JXS781,,A,
07 Jan 03:19:40	8399	REMINQ	4JMG935..A
07 Jan 03:19:41	8399	REMINQ	LIC,8399,4JMG935,,A,
07 Jan 03:19:52	5075	CLEAR	D/X:01
07 Jan 03:20:22	8339	CLEAR	D/XA:01
07 Jan 03:21:15	8369	CLEAR	D/XA:01
07 Jan 03:21:43	8349	CLEAR	D/XA:01
07 Jan 03:21:54	72M4	TRANSC	IN
07 Jan 03:22:32	8359	CLEAR	D/XA:01
07 Jan 03:23:14	72W4	CLEAR	D/XA:01
07 Jan 03:30:56	71M2	CLEAR	D/R:01
07 Jan 03:32:18	8319	CLEAR	D/X:01
07 Jan 03:36:09	8399	CLEAR	D/X:01
07 Jan 03:36:51	71W2	CLEAR	D/XR:01
07 Jan 03:37:35	7W10	MISC	, ON CALL ROBBERY LT STERNER TO CALL 7W10S CELL
07 Jan 03:38:16	7C10	CLEAR	D/X:01
07 Jan 03:54:00	IN	CROSS	#P040070007
07 Jan 05:14:32	72M4	TRANS	[JAIL]
07 Jan 05:16:07	72M4	TRANSC	IN
07 Jan 05:30:36	7W10	CLEAR	D/X:01
07 Jan 05:44:07	72M4	CLEAR	D/A:01 R:01 T/215 ,664 187 PC (ATTEMPTED MURDER) 215 PC (CARJACKING-ARMED)
07 Jan 06:28:02	71M3	FREE	IN
07 Jan 06:47:47	71M2	CLOSE	D/AR

SAN JOSE POLICE DEPARTMENT
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BY: 9342

CADmine *tm*

DATE: 7/31/08
IDENTIFICATION SECTION

3

Event Details Report

Run Date: 24 Jul 2008

Page 4 of 4

Unit Time Summary

<u>Unit ID</u>	<u>Dispatch</u>	<u>Enroute</u>	<u>Arrive</u>	<u>Clear</u>	<u>Minutes on-scene</u>
72M4	07 Jan 02:44:15	07 Jan 02:44:15	07 Jan 02:47:20	07 Jan 05:44:07	176.78
7W10	07 Jan 02:48:33	07 Jan 02:48:33	07 Jan 02:53:40	07 Jan 05:30:36	156.93
71W2	07 Jan 02:19:45	07 Jan 02:19:45	07 Jan 02:22:31	07 Jan 03:36:51	74.33
8319	07 Jan 02:19:43	07 Jan 02:19:43	07 Jan 02:20:08	07 Jan 03:32:18	72.17
71M2	07 Jan 02:19:43	07 Jan 02:19:43	07 Jan 02:20:29	07 Jan 03:30:56	70.45
8359	07 Jan 02:20:57	07 Jan 02:20:57	07 Jan 02:24:06	07 Jan 03:22:32	58.43
72W4	07 Jan 02:33:37	07 Jan 02:33:37	07 Jan 02:33:37	07 Jan 03:23:14	49.62
8399	07 Jan 02:40:54	07 Jan 02:40:54	07 Jan 02:46:44	07 Jan 03:36:09	49.42
7C10	07 Jan 02:48:28	07 Jan 02:48:28	07 Jan 02:52:21	07 Jan 03:38:16	45.92
71W1	07 Jan 02:20:27	07 Jan 02:20:27	07 Jan 02:27:08	07 Jan 03:12:13	45.08
8369	07 Jan 02:37:03	07 Jan 02:37:03	07 Jan 02:39:25	07 Jan 03:21:15	41.83
8339	07 Jan 02:41:25	07 Jan 02:41:25	07 Jan 02:41:25	07 Jan 03:20:22	38.95
8349	07 Jan 02:43:18	07 Jan 02:43:18	07 Jan 02:48:51	07 Jan 03:21:43	32.87
5075	07 Jan 02:48:23	07 Jan 02:48:23	07 Jan 02:48:23	07 Jan 03:19:52	31.48
8329	07 Jan 02:44:11	07 Jan 02:44:11	07 Jan 02:49:43	07 Jan 03:16:52	27.15
8300	07 Jan 02:44:38	07 Jan 02:44:38	07 Jan 02:52:20	07 Jan 03:18:09	25.82
76W1	07 Jan 02:20:08	07 Jan 02:20:08	07 Jan 02:46:00	07 Jan 03:00:36	14.60
71M3	07 Jan 02:51:03	07 Jan 02:51:03	07 Jan 03:12:09		0.00
Total:					<u>1,011.83</u>

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
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BY: 7/31/08

DATE: 9342
IDENTIFICATION SECTION

CADmine *tm*

4

POLICE REPORT

SAN JOSE POLICE DEPARTMENT
201 West Mission Street
San Jose, CA 95110 (408) 277-4261

BOOKING
INJURY

CASE NO.

04-007-007

0007

ROUTING N#	OSSD INDEX / CLETS CHECKED / UCR CODE	BEAT #	TYPE OF FORCE: Knife/Cutting Instr.			
6472	481N	M3				
REPORT TYPE	OCCURRED		DATE	TIME	DAY	
CARJACKING, ASSAULT WITH A DEADLY WEAPON	ON or FROM		1/7/2004	0010	WED	
LOCATION OF EVENT-PREMISES TYPE	TO					
IN THE AREA OF VIRGINIA AND KING ROAD IN SAN JOSE	REPORTED		1/7/2004	0010	WED	

OSSD "V" = VICTIM "R" = REPORTING PARTY "W" = WITNESS "O" = OTHER

NDR CMU ATTNY CORONER FIRE JPD PROPERTY GUN FLDR	V1	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		RACE	SEX	DOB	AGE	HT	WT
		LIONETTI, ANTHONY JOHN		X	M		60	5-10	310
	VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICT/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE			INTERPRETER NEEDED:					
	ADDRESS		CITY / STATE	ZIP	PHONE		DL NUMBER STATE		
CASE MGT	BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY / STATE	ZIP	PHONE		SSN		
					(408)				
	VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH								
	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		RACE	SEX	DOB	AGE	HT	WT	
ASSAULT ATTORNEY DOM. VIO. BURGLARY FIRE FRAUD HOMICIDE INTELL JUVENILE CA MP NCI RECORDS ROBBERY SAIU SBNE TIU VCU VICE BOMB SOD CLG CLT GC	VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICT/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		INTERPRETER NEEDED:						
	ADDRESS		CITY / STATE	ZIP	PHONE		DL NUMBER STATE		
	BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY / STATE	ZIP	PHONE		SSN		
					(408)				
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH									
VICTIM VEHICLE		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE / VIN		STATE
VICTIM #									
R/O'S NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY / STATE	ZIP	DAMAGE TO VEHICLE			

L/ PRINTS
EVIDENCE

VICTIM VEHICLE WAS: ☐ STOLEN ☐ IMPOUNDED ☐ STORED ☐ LEFT AT SCENE ☐ RELEASED AT SCENE ☐ HELD F/PRINTS ☐ PRINTED

PROPERTY (NOT FOR EVIDENCE) / COMPLETE SYNOPSIS OF INCIDENT

ITEM	QTY	BRAND	MODEL	DESCRIPTION OF PROPERTY	SERIAL #	VALUE
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.						
BY: <i>[Signature]</i> 9242						
G ITEM, QTY	MAKE OR MFG.	MODEL	CALIBER/GAUGE	TYPE	ACTION	SERIAL #
U						
N						
DATE: 7/28/08		COLOR	LICENSE #	FRAME #	SPEED	VALUE
IDENTIFICATION SECTION						

The contacted the police department to report the of the listed property.

This occurred. the victim's

VICTIM WAS (Check All That Apply) DRIVING POINT OF ENTRY LOCATION METHOD OF ENTRY VANDALISM

Associated Case Numbers: 04-007-0061

Additional Associated Reports: ☒ Yes

OFFICER'S NAME & ID NUMBER M. YBARRA #3826	DATE 01-07-04	SHIFT/DAYS OFF 3RD / THFS	SUPERVISOR REVIEW <i>[Signature]</i>	ID NUMBER 2348	DATE 1/7/04	PAGE 7 of 4
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REPORT TYPE		Case 5:07-cv-03888-RMW Document 22 Filed 09/15/2008 Page 34 of 64									
CARJACKING, ASSAULT WITH A DEADLY WEAPON		SUSPECT PAGE									
04-007-007											
<input checked="" type="checkbox"/> BOOKED <input type="checkbox"/> CITED <input type="checkbox"/> 849 (b) PC <input type="checkbox"/> COMPLAIN REVIEW <input type="checkbox"/> INFO ONLY <input type="checkbox"/> AT LARGE <input type="checkbox"/> VMC <input type="checkbox"/> SEE JCR											
S#1 LAST, FIRST, MIDDLE		RACE	SEX	DOB	AGE	HT.	WT.	HAIR	EYES		
GUTIERREZ, MICHAEL DAVID		H	M	0/30/1965	38	6-0	195	BK	GR		
AKA/MONIKER		RELATIONSHIP TO VICTIM		INTERPRETER NEEDED:							
		NONE									
ADDRESS		CITY/STATE		ZIP	PHONE		PFN				
1718 VIRGINIA AVE		SAN JOSE, CA			(408)		BYC583				
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP	PHONE		PHOTO ID #				
					(408)						
DL NUMBER	STATE	SSN	CITE#		CEN						
C2442206	CA										
CLOTHING					UNIQUE IDENTIFIERS (CI#)						
BLK/WHT CHECKERED SHIRT, BLK JEANS											
HAIR STYLE	HAIR TYPE	FACIAL HAIR	BUILD	COMPLEXION	WEAPONS	SCARS, MARKS, TATOOS, ETC.					
SHORT	STRAIGHT	MUSTACHE UNSHAVEN	MEDIUM	MEDIUM	CUTTING INST.	CODE: _____ LOC: _____					
					DESC: _____						

SPEECH					UNDER INFLUENCE						
CLOTHING					PCP						
CAP/HAT											
TEETH											
APPEARANCE											
UNKEMPT/DIRTY											
GLASSES											
HANDED											
					<input type="checkbox"/> ADD'L, SEE NARRATIVE						
<input type="checkbox"/> BOOKED <input type="checkbox"/> CITED <input type="checkbox"/> 849 (b) PC <input type="checkbox"/> COMPLAIN REVIEW <input type="checkbox"/> INFO ONLY <input type="checkbox"/> AT LARGE <input type="checkbox"/> VMC <input type="checkbox"/> SEE JCR											
S#		LAST, FIRST, MIDDLE		RACE	SEX	DOB	AGE	HT.	WT.	HAIR	EYES
AKA/MONIKER		RELATIONSHIP TO VICTIM		INTERPRETER NEEDED:							
ADDRESS		CITY/STATE		ZIP	PHONE		PFN				
					(408)						
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP	PHONE		PHOTO ID #				
					(408)						
DL NUMBER	STATE	SSN	CITE#		CEN						
CLOTHING					UNIQUE IDENTIFIERS (CI#)						
HAIR STYLE	HAIR TYPE	FACIAL HAIR	BUILD	COMPLEXION	WEAPONS	SCARS, MARKS, TATOOS, ETC.					
						CODE: _____ LOC: _____					

SPEECH					UNDER INFLUENCE						
CLOTHING											
TEETH											
APPEARANCE											
BY: 9340											
DATE: 7/28/08											
IDENTIFICATION SECTION											
<input type="checkbox"/> ADD'L, SEE NARRATIVE											
SUSPECT VEHICLE		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE/VIN		STATE		
SUSPECT #											
ADDITIONAL IDENTIFIERS: <input type="checkbox"/> LOWERED <input type="checkbox"/> RAISED <input type="checkbox"/> SPECIAL PAINT <input type="checkbox"/> SPECIAL WHEELS <input type="checkbox"/> SUN ROOF/TOP											
R/O'S NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY/STATE		ZIP	DAMAGE TO VEHICLE				
SUSPECT VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> LEFT AT SCENE <input type="checkbox"/> RELEASED AT SCENE <input type="checkbox"/> HELD F/PRINTS <input type="checkbox"/> PRINTED											
OFFICER'S NAME & ID NUMBER		DATE	SHIFT/DAYS OFF		SUPERVISOR REVIEW		ID NUMBER	DATE	PAGE 2 of 4		
M. YBARRA #3826		01-07-04	3RD / THFS								

SUPD SAN JOSE POLICE DEPARTMENT 201 W. Mission Street San Jose, CA 95110 277-4261		CASE NO. 04-007-0007	
REPORT TYPE <input type="checkbox"/> NARRATIVE <input checked="" type="checkbox"/>		VICTIM LAST, First, Mid. Lionetti, Anthony John	
SUSPECT LAST, First, Mid. Gutierrez, Michael David		SUSPECT ADDRESS 1718 Virginia Ave CITY/ZIP San Jose	
ITEM# QNTY		PROPERTY (and/or NARRATIVE) ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC.	
DATE: 1/7/04		SERIAL # VALUE	

IDENTIFICATION SECTION

SYNOPSIS:

On 1/7/04 at approximately 0010 a carjacking and assault with a deadly weapon occurred in the area of Virginia and King Road in San Jose. The suspect ordered a cab from the area of 1373 Phelps in San Jose. The victim drove the suspect to the area of Virginia and King where the suspect pulled a knife out and threatened to kill the victim. The Suspect ran over the victim and fled the scene with the victim's taxicab. The taxicab was located shortly down the block in the area of McCreery / Vollmer. The victim was transported to San Jose Medical Center for Further medical evaluation. On associated case #04-007-0061 a suspicious person fitting the description of the suspect involved in the car jacking was reported in the area of Virginia and King in San Jose. Initial investigating Officers made contact and the suspect was arrested on scene. The victim of the carjacking positively identified the suspect. The victim is in stable condition for non-life threatening injuries and the suspect was arrested and booked into county jail.

NARRATIVE:

On 1/7/04 at approximately 0010 hours, I responded to a report of a Taxicab driver was screaming stating, that someone was trying to steal his cab. Initial Officer on scene located the Taxicab at the corner of Vollmer/McCreery. I arrived on scene and confirmed the vehicle abandoned. I secured the scene and took approx 12 photos of the vehicle and lifted (1) latent print. Officer N. Lem #2618 made contact with the victim. The victim was transported to San Jose Hospital for further medical evaluation. See Officer Lem's Form 3 for details.

STATEMENT OF VICTIM ANTHONY JOHN LIONETTI, (V1):

See Officer N. Lem #2618 Form 3 for details.

I ordered a vehicle impound and per Sgt Overstreet #2202 the vehicle was placed at the Vehicle Warehouse for further investigation. I followed the Tow-truck transporting the vehicle and booked the Taxicab into the Vehicle Warehouse as evidence.

At approximately 0218 hours, a report of a suspicious person acting crazy call occurred in the area of Virginia and King road (Case #04-007-0061). The suspects description fit the description of the car jacking suspect.

Initial officers made contact and took custody of S1. Officer Vaughn #3607 and Officer Jennings #3608 transported the suspect to San Jose Medical Center. At San Jose Medical Center V1 positively identified S1 as the suspect. Officer Vaughn and Officer Jennings transported S1 to PPC and later booked him into County Jail.

STATEMENT OF SUSPECT MICHAEL D. GUTIERREZ, (S1):

See Officer R. Vaughn #3607 and Officer T. Jennings' #3608 Form 3 for details.

SUPDSAN JOSE POLICE DEPARTMENT
201 W. Mission Street
San Jose, CA 95110 277-4261

CASE NO.

04-007-0007

REPORT TYPE <input type="checkbox"/> NARRATIVE <input type="checkbox"/> SUPPLEMENTAL		VICTIM LAST, First, Mid.	
Car Jacking, Assault w/ deadly weapon		Lionetti, Anthony John	
SUSPECT LAST, First, Mid.		SUSPECT ADDRESS	CITY/ZIP
Gutierrez, Michael David		1718 Virginia Ave	San Jose
PROPERTY (and/or NARRATIVE)			
ITEM#	QNTY	ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC.	SERIAL # VALUE

PHYSICAL EVIDENCE:

I took approximately 12 photos of the taxicab and booked the undeveloped film into the photolab locker at Central Supply. I lifted (1) latent print from the taxicab.

END OF REPORT

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 934NDATE: 7/28/08
IDENTIFICATION SECTION

SUPPLEMENTAL REPORT SAN JOSE POLICE DEPARTMENT 201 W. Mission Street San Jose, CA 95110 277-4261		CASE NO. 04-007-0007	
REPORT TYPE <input type="checkbox"/> NARRATIVE <input checked="" type="checkbox"/> SUPPLEMENTAL		VICTIM LAST, First, Mid.	
SUSPECT LAST, First, Mid.		SUSPECT ADDRESS CITY/ZIP	
ITEM# QNTY		2004-10-11-7 001 6:43 2004-10-11-7 001 6:43 PROPERTY (and/or NARRATIVE) ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC. SERIAL # VALUE	

NARRATIVE:

On 01-07-04 at approx. 0010 hrs Ofc M. Natwick #3326 and I were working SJPD Violent Crime Enforcement Team (VCET). Ofc Natwick and I responded to a reported Carjacking (215 PC) in the area of Virginia Ave at S. King Rd. Upon responding to the scene I observed the victim Lionetti lying on the ground in the middle of the block. Lionetti complained of pain to his right side and appeared to be suffering from blunt trauma injury. (see original FM2 for further).

Upon contacting Lionetti, Lionetti stated he was working driving for Checkered Cab. Lionetti stated he picked up a fare at the 7-11 located at Fruitdale at Bascom Ave. Lionetti stated the fare / suspect identified (ID) himself as "Mike." Lionetti described the suspect as a Hispanic, male, adult; 30yrs, 5'10", 180lbs, unshaven with about three (3) days growth of facial hair. The suspect was wearing a knit "watch" cap, gray checkered pendelton shirt and blue jeans.

Lionetti stated the suspect directed him to the area of Virginia Ave at S. King Rd. Upon reaching the destination the suspect stated he only had a \$100.00 bill. Lionetti asked to see the \$100.00 bill at which point the suspect exited the cab and attempted to walk away. Lionetti confronted the suspect outside in front of the cab leaving the driver side cab door open and demanding payment for the cab ride. Lionetti stated the suspect then brandished a folding knife, which Lionetti described as a switch blade knife. Lionetti stated he had a flashlight that he raised in self-defense. Lionetti stated the suspect then backed away but towards the open door of the cab. Lionetti stated he told the suspect to move away from the cab; however the suspect entered the cab and attempted to drive away. Lionetti stated he attempted to stop the suspect from leaving with the cab but was struck with the left side of the cab causing the above injuries. Lionetti stated the suspect then drove the cab away E/B on Virginia.

Lionetti was transported to the hospital for treatment. Police located the cab in the area of Volmer and McCreery; however, the suspect had already fled the scene and could not be located. Lionetti stated he would be able to recognize and ID the suspect if seen again. (further see original FM2).

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//

Nothing further.

**SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.**

BY: 934N

DATE: 7/28/08
IDENTIFICATION SECTION

REPORT TYPE 215 PC	SUPPLEMENTAL		SJPD 0351 CONTINUATION		CASE NO. 04-007-0007	
2004 JUN -7 AM 10:31						
<p>1 <u>SUPPLEMENTAL:</u> ON 01-07-03, AT APPROX. 0054 HRS, I ARRIVED AT</p> <p>2 THE 7-ELEVEN STORE AT 2170 FRUITDALE AV. IN</p> <p>3 SAN JOSE TO CONDUCT FOLLOW-UP REGARDING THIS CASE. (SGT. J.</p> <p>4 OVERSTREET #2202 HAD REQUESTED AN OFFICER RESPOND THERE TO</p> <p>5 INQUIRE ABOUT THE AVAILABILITY OF THE VIDEOTAPE FROM SECURITY</p> <p>6 CAMERAS SINCE THE VICTIM & SUSPECT MIGHT HAVE BEEN AT THAT</p> <p>7 STORE BEFORE THIS INCIDENT OCCURRED.)</p> <p>8 UPON MY ARRIVAL AT THE STORE, I CONTACTED THE ON-DUTY</p> <p>9 CLERK (CLAY LAMBERT (O-1)) WHO SAID THE VIDEOTAPE SYSTEM IS</p> <p>10 LOCKED IN THE MANAGER'S OFFICE & HE WAS UNABLE TO ACCESS IT.</p> <p>11 O-1 THEN TOLD ME THE MANAGER (PHYLLIS SHIDELER (O-2)) USUALLY</p> <p>12 ARRIVES AT THE STORE AT APPROX. 0700 HRS, O-1 ALSO GAVE ME</p> <p>13 HER VOICEMAIL #. (I LEFT A MESSAGE FOR HER TO CONTACT ME</p> <p>14 UP UNTIL 0700 HRS OR THE ROBBERY UNIT AFTER THAT.)</p> <p>15 I THEN ASKED O-1 IF HE KNEW A CAB DRIVER WHO DRIVES AN</p> <p>16 ORANGE CAB. O-1 SAID HE KNOWS "TONY" WHO IS A CABBIE FOR THE</p> <p>17 YELLOW CHECKER CAB COMPANY. O-1 SAID HE REMEMBERS SEEING</p> <p>18 TONY & HIS CAB SOME-TIME BEFORE MIDNIGHT, BUT DIDN'T</p> <p>19 REMEMBER SEEING A PERSON DESCRIBED AS A HMA, 30, WEARING</p> <p>20 A BLACK & WHITE PENDLETON INSIDE OR OUTSIDE THE STORE.</p> <p>21 I LEFT A REPORT RECEIPT WITH O-1 NOTING THIS CASE #</p> <p>22 & ROBBERY'S PHONE # FOR FUTURE REFERENCE BEFORE I LEFT THE</p> <p>23 STORE.</p>						
<p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p>						
<p>SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.</p> <p>BY: <u>9342</u></p> <p>DATE: <u>7/28/08</u></p> <p>IDENTIFICATION SECTION</p>						
OFFICER'S NAME <u>E. Martin</u>	ID NUMBER <u>2446</u>	DATE <u>1-7-04</u>	SHIFT/DAYS OFF <u>3/TFS</u>	SUPERVISOR REVIEW	ID NUMBER	DATE
				PG <u>1</u> OF <u>2</u>		

REPORT TYPE 215 PC		SUPPLEMENTAL		SJPD ADDITIONAL PARTIES		CASE NO. 04-007-0007	
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) 01 LAMBERT, CLAY NMN JR. (CLERK)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS (DECLINED)		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) 02 SHIDELER, PHYLLIS JUNE (MANAGER)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS (UNKNOWN FOR SURE)		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		STATE OF CA		RACE W		DOB [REDACTED]	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VIC/WIT ASSIST. <input type="checkbox"/> DOMESTIC VIOLENCE		CITY/STATE		ZIP		PHONE	
ADDRESS		CITY/STATE		ZIP		PHONE	
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE		ZIP		PHONE	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPH		STATE OF CA		RACE W		DOB [REDACTED]	
LAST, FIRST, MIDDLE							

INDEX 1028N

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL CAR JACKING (215 pc)	SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL. CONTINUATION OF 007-0007 BY: 934N DATE: 7/28/08						
IDENTIFICATION SECTION							
1 ON 1-7-04 AT APPROX. 8:00 AM. POLICE WERE DISPATCHED 2 TO 1651 VIRGINIA AVE ON A UNKNOWN DISTURBANCE. 3 UPON ARRIVAL, WE LEARNED A CAR JACKING HAD OCCURRED. 4 I FOUND THE VICTIM LYING ON THE STREET FACE DOWN NEAR 5 1658 VIRGINIA AVE. THE VICTIM TOLD ME HE WAS INJURED, 6 BUT WAS ABLE TO TALK. THE VICTIM WAS IDENTIFIED AS 7 ANTHONY LIONETTI. (YELLOW CAB DRIVER) 8 (V) LIONETTI TOLD ME THAT HE PICKED UP THE SUSPECT AT 9 THE 7-11 STORE ON BASCOM AVE AND FRUITVALE. THE SUSPECT 10 WANTED TO GO TO KING AND STORY RDS. WHILE ENROUTE 11 THERE, THE SUSPECT DIRECTED THE VICTIM TO TURN DOWN ON 12 VIRGINIA AVE. THE SUSPECT TOLD THE VICTIM, "THAT'S WHERE MY 13 PAD 'IS". THE VICTIM STOPPED THE CAB IN FRONT OF 1658 14 VIRGINIA AVE. THE SUSPECT GOT OUT OF THE VEHICLE TO URINATE. 15 THE VICTIM PULLED INTO THE DRIVEWAY OF 1658 VIRGINIA AVE AND 16 WAITED FOR THE SUSPECT TO RETURN. A FEW MOMENTS, THE 17 SUSPECT RETURNED. THE VICTIM GETS OUT OF THE CAB TO 18 COLLECT HIS MONEY FROM THE SUSPECT. THE SUSPECT PULLED 19 OUT A KNIFE FROM HIS PANT POCKET AREAS, AND POINTED IT 20 AT THE VICTIM. THE VICTIM IN FEAR FOR HIS LIFE, BACKS 21 AWAY FROM THE SUSPECT. THE SUSPECT JUMPS INTO THE CAB 22 AND ATTEMPTS TO TAKE OFF. THE VICTIM CONFRONTS THE 23 SUSPECT, NOW SEATED IN THE DRIVERS SIDE OF THE CAB, 24 THE SUSPECT'S BACKED THE CAB ONTO THE STREET, WHILE 25 DOING SO, THE VICTIM IS KNOCKED DOWN TO THE GROUND BY 26 THE OPEN DRIVERS DOOR. THE VICTIM IS DRAGGED APPROX. 27 4 FT... THE VICTIM ROLLED OVER TO AVOID BEING RUN OVER BY 28 THE FRONT TIRES. THE SUSPECT GOES FORWARD AND THE 29 FRONT DOOR STRUCK HIM AGAIN IN THE CHEST AREAS AS THE 30 VEHICLE MOVED FORWARD. THE SUSPECT FLED W/B ON VIRGINIA.							
OFFICER'S NAME Noland LEM	ID NUMBER 2618	DATE 1-7-04	SHIFT/DAYS OFF 3 TFS	SUPERVISOR REVIEW	ID NUMBER	DATE	PG 1 OF 2

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL	SAN JOSE POLICE DEPARTMENT IDENTIFICATION SECTION TRUE COPY OF THE ORIGINAL.		CASE NO. 64-007-0007
CARJacking (215pc)			
BY: 934N			
DATE: 7/28/08			
<p>1 THE Victim DESCRIBED IDENTIFICATION SECTION AS A HISPANIC MALE,</p> <p>2 IN HIS 30'S. APPROX 5-10, AND APPROX 180+ POUNDS.</p> <p>3 HE WAS WEARING A DARK COLOR BEANIE CAP. A MULTI-COLOR</p> <p>4 FLANNEL TYPE SHIRT AND BLUE JEANS. THE SUSPECT SPOKE</p> <p>5 GOOD ENGLISH. THE VICTIM SAID THE SUSPECT WAS ACTING</p> <p>6 BIZARRE LIKE HE WAS HIGH ON DRUGS. THE VICTIM DID NOT</p> <p>7 SMELL AN ODOR OF AN ALCOHOLIC BEV. ON THE SUSPECT.</p> <p>8 THE SUSPECT ALSO HAD ABOUT 3 DAYS GROWTH OF FACIAL</p> <p>9 HAIR ON HIS FACE</p> <p>10 THE VICTIM WAS TRANSPORTED TO SAN JOSE MEDICAL CTR.</p> <p>11 AND TREATED FOR HIS INJURIES. THE VICTIM SUSTAINED (2)</p> <p>12 BROKEN RIBS. NUMEROUS ABRASIONS ON THE RIGHT SIDE OF</p> <p>13 HIS HEAD, ARMS, THIGHS, LEGS, KNEES AND LEFT BACK AREAS</p> <p>14 THE VICTIM IS ADMITTED OVER NIGHT FOR OBSERVATION.</p> <p>15</p> <p>16 WHILE AT THE HOSPITAL, I WAS INFORMED BY SGT. OVERSTREET</p> <p>17 # 2202 THAT A POSSIBLE SUSPECT WAS DETAINED. AN</p> <p>18 INFILTRATION SHOW UP WAS TO BE CONDUCTED SECRETLY AT THE</p> <p>19 HOSPITAL. AT APPROX 0314 HRS. I ADMONISHED THE</p> <p>20 VICTIM. I TOLD THE VICTIM THAT WE WANT TO SHOW YOU</p> <p>21 SOMEONE WE HAVE DETAINED. THIS PERSON MAY OR MAY NOT</p> <p>22 BE THE ONE PERSON WHO DID THIS TO YOU.</p> <p>23 THE SUSPECT WAS BROUGHT INTO THE HOSPITAL. THE SUSPECT</p> <p>24 FRODDED THE VICTIM DIRECTLY. THE VICTIM IMMEDIATELY STATED</p> <p>25 "THAT'S HIM" THE VICTIM SAID I REMEMBER HIS FACE</p> <p>26 AND CLOTHING. THE SUSPECT WAS ARRESTED, PROCESSED AND</p> <p>27 BOOKED.</p> <p>28 (INFILTRATION SHOW WAS CONDUCTED AT THE HOSPITAL DUE TO</p> <p>29 THE VICTIM'S INJURIES.)</p> <p>30</p>			
OFFICER'S NAME Noland km	ID NUMBER 2618	DATE 1-7-04	SHIFT/DAYS OFF 3 TFS
SUPERVISOR REVIEW		ID NUMBER	DATE
			PG 2 OF 2

SUPPLEMENTAL REPORT SAN JOSE POLICE DEPARTMENT 201 W. Mission Street San Jose, CA 95110 277-4261		CASE NO. 04-007-007	1 OF 1
REPORT TYPE 215, 664/187	<input type="checkbox"/> NARRATIVE <input checked="" type="checkbox"/> SUPPLEMENTAL	VICTIM LAST, First, Mid. REFER TO FORM2	
SUSPECT LAST, First, Mid. GUTIERREZ, MICHAEL, DAVID		SUSPECT ADDRESS CITY/ZIP	
PROPERTY (and/or NARRATIVE) ITEM# QNTY ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC. SERIAL # VALUE			

SUPPLEMENTAL NARRATIVE: On 01-07-2004 at approximately 0247 hours, Ofc. Jennings #3608 and I were in full uniform in a fully marked patrol vehicle working a two officer unit in District Mary as unit (72M4). We responded to the area of Virginia Ave and King Rd on a call of a suspicious person "acting crazy" in front of an apartment complex. The reporting party believed that the subject was the suspect in a prior car jacking case.

The subject eventually exited the apartment and was taken into custody without incident. A folding knife was located on the (s)'s person. We transported him to the San Jose Hospital. The victim could not be moved due to his injuries. The victim positively identified (s)Gutierrez as the suspect.

(s)Gutierrez was transported to PPC. A blood sample was obtained at approximately 0425 hours. The sample was booked into the PPC evidence locker. (s)Gutierrez did not want to give a statement. (s)Gutierrez' clothes were removed. Eight photos were taken prior to removing (s)'s clothing. The photos, knife and (s) clothing were booked into the San Jose Police property room. (s)Gutierrez was booked into the Santa Clara County jail on charges of car jacking (215 PC) and attempted murder (664/187 PC).

END OF REPORT

SAN JOSE POLICE DEPARTMENT
 I HEREBY CERTIFY THIS TO BE A
 TRUE COPY OF THE ORIGINAL.

BY: 934N

DATE: 7/28/08
 IDENTIFICATION SECTION

QC
 629N

SUPDSAN JOSE POLICE DEPARTMENT
201 W. Mission Street
San Jose, CA 95110 277-4261

CASE NO.

04-007-0007

REPORT TYPE



NARRATIVE



SUPPLEMENTAL

215 PC

VICTIM LAST, First, Mid.

SUSPECT LAST, First, Mid.

Gutierrez, Michael

SUSPECT ADDRESS

CITY/ZIP

PROPERTY (and/or NARRATIVE)

ITEM# QNTY

ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC.

SERIAL # VALUE

Narrative: On 1/7/04 I was in full uniform and in a marked patrol car assigned to patrol. At approximately 0218 hrs, we received a call of a suspicious person who was acting crazy and who was possibly a suspect to the carjacking we responded to earlier. Upon arrival, I contacted several witnesses who wanted to remain anonymous. I took this statement from one of the witnesses.

(W) Garduno's Statement: She stated that she was over at her brother's apartment ([REDACTED]), when (S) Gutierrez came to the door acting strange and was looking for a place to stay. He appeared to be intoxicated. Due to his strange and aggressive behavior the witnesses told him he could not stay. While (W) Garduno was outside talking to the suspect, a police officer drove by and the suspect suddenly took off his hat and began to act very nervously. He then asked for a ride out of the area. He began to act aggressively towards others present. (W) Garduno got scared and went to her apartment to call the police. While walking to her apartment she heard some of the neighbors mention that (S) Gutierrez was driving through the neighborhood in the stolen "Checker" cab a little while earlier. She called the police from her apartment.

While we were speaking to the witnesses, it was determined that the possible suspect may have been at [REDACTED]. Contact was made with the occupants of [REDACTED] and it was confirmed that the possible suspect was inside the apartment. We evacuated the residents and made contact with the subject. After a brief negotiation, the subject agreed to come out. He was taken into custody without incident. See F-3's for further info.

Witness InfoGarduno, Robin Denise dob [REDACTED]
[REDACTED]
[REDACTED]

End

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 9340DATE: 1/28/08

IDENTIFICATION SECTION

2004 JAN 12 AM 7:56

SAN JOSE POLICE DEPARTMENT
11 FOR THIRD PARTY RELEASE
DO NOT WRITE
F/0331OFFICER'S NAME/BADGE
S. Vu #3129DAYS OFF/SHIFT
FSS/3

SUPERVISOR

QC
7/17

REPORT TYPE <input checked="" type="checkbox"/> SUPPLEMENTAL CAR JACKING	SJPD CONTINUATION	CASE NO. 04-007-0007					
<p>1 ON 1-7-04 THE V/O RESPONDED TO THE SCENE OF A CAR JACKING</p> <p>2 AT VIRGINIA AND KING RDS. DURING THE INITIAL INVESTIGATION THE</p> <p>3 SUSP WAS DESCRIBED AS A 30 YR OLD HMA SHAVED HEAD APPROX</p> <p>4 5'8" 160 LBS. THE DESCRIPTION ALSO WAS THE SUSP HAD A FIRST</p> <p>5 NAME OF MIKE. THE V/O HAD WORKED A CASE THE NIGHT BEFORE</p> <p>6 WHERE A SIMILAR DESCRIBED SUSPECT HAD FLED THE SCENE OF</p> <p>7 A CAR STOP AND GOT AWAY. THE V/O WAS ABLE TO IDENTIFY</p> <p>8 THAT SUSPECT AS MICHAEL MAESTAS. DUE TO THE SIMILAR</p> <p>9 AREA AND DESCRIPTION OF THE SUSP WHO WAS ALSO WANTED</p> <p>10 ON FEROUS PAROLE VIOLATION THE V/O FELT THE SUSPECT IN</p> <p>11 THE CARJACKING CASE MIGHT BE MAESTAS. THE V/O CONTACTED</p> <p>12 NIGHT DET SGT M. BROWN. I GAVE HIM THIS INFORMATION AND</p> <p>13 HE CONTACTED ROBBERY DETECTIVES WHO APPROVED FOR THE V/O</p> <p>14 TO SHOW A PHOTO LINE UP WITH SUSP M. MAESTAS TO</p> <p>15 OUR CAR JACKING VICTIM. THE LINEUP WAS SHOWN</p> <p>16 TO VICTIM LIONETTI BUT HE DID NOT PICK ANY</p> <p>17 OF THE PHOTOS IN THE LINEUP AS THE ROBBER IN</p> <p>18 THE CAR-JACKING CASE.</p> <p>19</p> <p>20</p> <p>21 THE V/O BROKE THE PHOTO LINE-UP INTO PROPERLY</p> <p>22</p> <p>23</p>							
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.							
BY: 9342							
DATE: 1/28/08 IDENTIFICATION SECTION							
OFFICER(S) NAME	ID NUMBER	DATE	SHIFT/DAYS OFF	SUPERVISOR REVIEW	ID NUMBER	DATE	PG ____ OF ____
Sgt J. W.	2202	1-8-03	MIDS THRS				

INDX 10'28N

REPORT TYPE PC 215	<input checked="" type="checkbox"/> SUPPLEMENTAL	SJPD SAN JOSE POLICE DEPARTMENT	CASE NO. 04-007-0007 04-007-0006
I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL. BY: 9340			
1 NARRATIVE:		DATE: 7/28/08	
2		IDENTIFICATION SECTION	
3 ON 1/7/04 AT APPROXIMATELY 0219 HOURS, I WAS DISPATCHED 4 TO [REDACTED] TO THE REPORT OF A MALE IN FRONT 5 OF THE RESIDENCE "ACTING CRAZY." THE RP STATED THE 6 MALE WAS A HISPANIC MALE, WEARING A BLACK AND WHITE 7 PENDLETON. THE DESCRIPTION OF THE SUSPICIOUS PERSON 8 MATCHED THE BOL FOR A CARJACKING SUSPECT FROM AN EVENT 9 EARLIER IN THE SAME AREA (04-007-0007). 10			
11 WHEN I ARRIVED ON SCENE, THE ADDITIONAL UNITS AND I ATTEMPTED 12 TO LOCATE THE SUBJECT. AFTER THE SUBJECT WAS LOCATED 13 AND APPREHENDED, I OBTAINED THE FOLLOWING ADDITIONAL 14 INFORMATION FROM THE SUSPECT'S BROTHER, (O) GARDUNO: 15			
16 STATEMENT OF OTHER PARTY GARDUNO: 17			
18 (O) GARDUNO STATED THAT HE HAD HEARD FROM A FRIEND THAT 19 HIS BROTHER, (S) GUTIERREZ, WAS INVOLVED IN AN EARLIER 20 INCIDENT INVOLVING A TAXI CAB. (S) GUTIERREZ CAME TO 21 (O) GARDUNO'S RESIDENCE SHORTLY BEFORE THE REPORT OF THE 22 SUSPICIOUS PERSON WAS MADE. (O) GARDUNO STATED THAT 23 (S) GUTIERREZ WAS ACTING STRANGELY. (O) GARDUNO INVITED 24 (S) GUTIERREZ IN AND (O) GARDUNO LEFT THE RESIDENCE. 25			
26 SHORTLY AFTER THAT, (O) GARDUNO WAS OUTSIDE, LEAVING THE 27 AREA WITH A FRIEND IN THE FRIEND'S VEHICLE. (S) GUTIERREZ 28 CAME OUTSIDE AND, AS (O) GARDUNO WAS LEAVING, 29 (S) GUTIERREZ SWUNG A KNIFE AT HIM. (O) GARDUNO 30 WASN'T SURE IF (S) GUTIERREZ INTENDED TO HIT HIM			
OFFICER'S NAME D. MARCHETT	ID NUMBER 5512	DATE 1/7/04	SHIFT/DAYS OFF MIDS/TES
SUPERVISOR REVIEW		ID NUMBER	DATE
		PG 2	OF 2

REPORT TYPE SUPPLEMENTAL PC 215	SJPD CONTINUATION	CASE NO. 04-007-0007 04-007-0061					
1 OR THE VEHICLE, BUT FEARED (S) GUTIERREZ WAS 2 SWINGING THE KNIFE AT HIM. (S) GUTIERREZ SCRAPED 3 THE VEHICLE. AS (O) GARDUNO WAS DRIVING OFF, 4 (S) GUTIERREZ KICKED THE TRUCK AND YELLED 5 "YOU MOTHER Fucker," AT (O) GARDUNO. 6 7 (O) GARDUNO STATED (S) GUTIERREZ RECENTLY GOT OUT OF 8 JAIL AND HAD BEEN STAYING WITH HIM UNTIL A COUPLE 9 NIGHTS PRIOR TO THIS INCIDENT. (O) GARDUNO STATED 10 THE OTHER RESIDENTS WERE AFRAID OF (S) GUTIERREZ 11 SO HE TOLD (S) GUTIERREZ HE COULD NO LONGER 12 STAY AT HIS RESIDENCE. 13 14 (O) GARDUNO BELIEVED (S) GUTIERREZ HAS BEEN ANGRY. 15 TOWARD HIM SINCE. 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30							
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL. BY: 9342 DATE: 7/28/08 IDENTIFICATION SECTION							
OFFICER'S NAME V. MARQUEZ	ID NUMBER 5812	DATE 7/7/04	SHIFT/DAYS OFF MIDS/TES	SUPERVISOR REVIEW	ID NUMBER	DATE	PG 3 OF 3

SJPDSAN JOSE POLICE DEPARTMENT
201 W. Mission Street
San Jose, CA 95110 277-4261

CASE NO.

04-007-0007

1 OF 1

REPORT TYPE 664/187 - PC	<input type="checkbox"/> NARRATIVE <input checked="" type="checkbox"/> SUPPLEMENTAL	VICTIM LAST, First, Mid. REFER TO FORM 2
SUSPECT LAST, First, Mid. GUTIERREZ, MICHAEL, DAVID		SUSPECT ADDRESS CITY/ZIP
PROPERTY (and/or NARRATIVE) ITEM# QNTY ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC. SERIAL # VALUE		

SUPPLEMENTAL NARRATIVE: On 01-07-2004 Officer Jennings #3608 and I took custody of suspect Gutierrez. He was positively identified as the suspect in this car jacking case. During contact with (s)Gutierrez, I observed multiple bizarre and unusual behaviors. (s)Gutierrez would not immediately respond to questions. He had his eyes fixed off in the distance and appeared to have trouble focusing his attention. His eyes were glassy and wide open. (s)Gutierrez had dry lips and mouth. His skin was sweaty and cold.

During the ride to PPC, (s)Gutierrez repeated the same statement again and again. He stated that he had not done anything and wanted to know where he was being taken. I would answer his question and five to ten seconds later he would ask the same question again.

Inside PPC, (s)Gutierrez would be very quiet and non-responsive. Moments later he would start rambling about how he did not think he should be arrested for something he didn't do. I explained to him that I was going to read him his Miranda rights. Before I read them to him, he continuously stated that he was not going to answer any questions and wanted a lawyer. I did not read him his rights and did not ask any questions.

END OF REPORT

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 9340

DATE: 7/28/08
IDENTIFICATION SECTION

DC
7/17/08

200-2 5/96

SJPDSAN JOSE POLICE DEPARTMENT
201 W. Mission Street
San Jose, CA 95110 277-4261

CASE NO.

04-007-0007

REPORT TYPE

☐ NARRATIVE☒ SUPPLEMENTAL

VICTIM LAST, First, Mid.

215 PC

SUSPECT LAST, First, Mid.

SUSPECT ADDRESS

CITY/ZIP

ITEM# QNTY

PROPERTY (and/or NARRATIVE)
ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC.

SERIAL # VALUE

Upon arriving in the area of Virginia Ave at S. King Rd. I observed several citizens from the area standing outside on the sidewalk. The location of occurrence was a residential area of apartments illuminated by streetlights.

I contacted Lionetti and observed Lionetti lying on the street approx. two-three (2-3') feet from the south sidewalk behind an unknown make model parked vehicle. Lionetti was lying on his stomach with his arm beneath his head. Lionetti appeared to be injured having redness to his face and arms consistent with blunt trauma injury. (Upon the arrival of Emergency medical personnel Lionetti's shirt was removed revealing additional redness to his upper torso also consistent with blunt trauma injury.)

Lionetti was screaming that he was hurt and believed he was dying. Lionetti appeared emotional and excited. I observed Lionetti was breathing heavily, sweating, excited and speaking in a rapid manner. Lionetti was also angry and worried about his cab that had been stolen and repeatedly asked about the condition of the cab. Lionetti appeared to be under the stress of the incident; however was still coherent to speak with me. Lionetti was able to provide a synopsis of what occurred, his location and a description of the suspect.

I advised Sgt J. Overstreet #2202 of this incident. Refer to original FM2 for further investigation.

//

//

//

Nothing further.

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY:

9340

DATE:

7/28/08

IDENTIFICATION SECTION

OFFICER'S NAME/BADGE

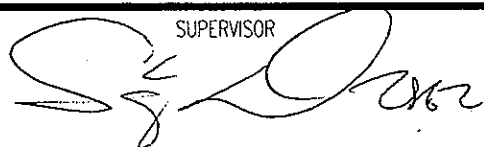
K. Mizuhara#3377

DAYS OFF/SHIFT

01-07-04

2nd TFS

SUPERVISOR



Se
6412

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		SJPD SUSPECT PAGE		CASE NO. <u>04-007-0007</u> <u>04-1166-0212</u>							
<input checked="" type="checkbox"/> BOOKED <input type="checkbox"/> CITED <input type="checkbox"/> 849(b) PC <input checked="" type="checkbox"/> COMPLAINT REVIEW <input type="checkbox"/> INFO ONLY <input type="checkbox"/> AT LARGE <input type="checkbox"/> VMC <input type="checkbox"/> SEE JCR											
S#	LAST, FIRST, MIDDLE <u>GUTIERREZ, MICHAEL</u>	RACE <u>H</u>	DOB <u>10-30-65</u>	AGE <u>38</u>	HT <u>6-0</u>						
		WT <u>200</u>	HAIR <u>BK</u>	EYES <u>GRN</u>							
AKA / MONIKER		RELATIONSHIP TO VICTIM		INTERPRETER NEEDED: <input type="checkbox"/> SPANISH <input type="checkbox"/> OTHER: <input type="checkbox"/> VIETNAMESE							
ADDRESS		CITY/STATE	ZIP	PHONE	PFN <u>B4C583</u>						
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE	ZIP	PHONE	PHOTO ID#						
DL NUMBER STATE <u>C2442206</u>	SSN <u>CA</u>	CITE #		CEN							
CLOTHING				UNIQUE IDENTIFIERS (CII#)							
<table border="0" style="width:100%;"> <tr> <td>HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT</td> <td>HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER</td> <td>FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK</td> <td>BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER</td> <td>COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED</td> <td>WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:</td> </tr> </table>				HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT	HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER	FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK	BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER	COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED	WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:	SCARS, MARKS, TATTOOS, ETC. CODE: _____ LOC: _____ DESC: _____ <input type="checkbox"/> ADD'L, SEE NARRATIVE CODE: S = SCARS M = MARKS P = PIERCING T = TATTOOS MB = MISSING BODY PTS. UNDER THE INFLUENCE <input type="checkbox"/> ALCOHOL <input type="checkbox"/> STIMULANT <input type="checkbox"/> PCP <input type="checkbox"/> OPIATE <input type="checkbox"/> OTHER: _____	
HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT	HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER	FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK	BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER	COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED	WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:						
<input type="checkbox"/> BOOKED <input type="checkbox"/> CITED <input type="checkbox"/> 849(b) PC <input type="checkbox"/> COMPLAINT REVIEW <input type="checkbox"/> INFO ONLY <input type="checkbox"/> AT LARGE <input type="checkbox"/> VMC <input type="checkbox"/> SEE JCR											
S#	LAST, FIRST, MIDDLE <u>SAN JOSE POLICE DEPARTMENT</u>	RACE <u>M</u>	DOB	AGE	HT						
		F			WT						
					HAIR						
					EYES						
AKA / MONIKER I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.		RELATIONSHIP TO VICTIM		INTERPRETER NEEDED: <input type="checkbox"/> SPANISH <input type="checkbox"/> OTHER: <input type="checkbox"/> VIETNAMESE							
ADDRESS BY: <u>9340</u>		CITY/STATE	ZIP	PHONE	PFN						
BUSINESS NAME/SCHOOL NAME AND ADDRESS		CITY/STATE	ZIP	PHONE	PHOTO ID#						
DL NUMBER STATE <u>DATE: 7/28/08</u>	SSN	CITE #		CEN							
IDENTIFICATION SECTION				USE AS FORM 3A							
CLOTHING				UNIQUE IDENTIFIERS (CII#)							
<table border="0" style="width:100%;"> <tr> <td>HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT</td> <td>HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER</td> <td>FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK</td> <td>BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER</td> <td>COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED</td> <td>WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:</td> </tr> </table>				HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT	HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER	FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK	BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER	COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED	WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:	SCARS, MARKS, TATTOOS, ETC. CODE: _____ LOC: _____ DESC: _____ <input type="checkbox"/> ADD'L, SEE NARRATIVE CODE: S = SCARS M = MARKS P = PIERCING T = TATTOOS MB = MISSING BODY PTS. UNDER THE INFLUENCE <input type="checkbox"/> ALCOHOL <input type="checkbox"/> STIMULANT <input type="checkbox"/> PCP <input type="checkbox"/> OPIATE <input type="checkbox"/> OTHER: _____	
HAIR STYLE <input type="checkbox"/> AFRO <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> BRAIDED <input type="checkbox"/> COLLAR <input type="checkbox"/> CREW CUT <input type="checkbox"/> LONG <input type="checkbox"/> PONY TAIL <input type="checkbox"/> PUNK <input type="checkbox"/> SHORT	HAIR TYPE <input type="checkbox"/> RECEDING <input type="checkbox"/> STRAIGHT <input type="checkbox"/> WAVY/CURLY SPEECH <input type="checkbox"/> ACCENT <input type="checkbox"/> LISP <input type="checkbox"/> STUTTER	FACIAL HAIR <input type="checkbox"/> BEARD <input type="checkbox"/> CLEAN SHAVEN <input type="checkbox"/> FU MANCHU <input type="checkbox"/> GOATEE <input type="checkbox"/> LOWER LIP <input type="checkbox"/> MUSTACHE <input type="checkbox"/> SIDE BURNS <input type="checkbox"/> UNSHAVEN CLOTHING <input type="checkbox"/> CAP/HAT <input type="checkbox"/> GLOVES <input type="checkbox"/> MASK	BUILD <input type="checkbox"/> HEAVY <input type="checkbox"/> MEDIUM <input type="checkbox"/> MUSCULAR <input type="checkbox"/> POT BELLY <input type="checkbox"/> SMALL <input type="checkbox"/> THIN TEETH <input type="checkbox"/> GOLD <input type="checkbox"/> MISSING <input type="checkbox"/> ROTTEN <input type="checkbox"/> SILVER	COMPLEXION <input type="checkbox"/> ACNE/POCKED <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM APPEARANCE <input type="checkbox"/> BODY ODOR <input type="checkbox"/> DISGUISE <input type="checkbox"/> UNKEMPT/DIRTY <input type="checkbox"/> WELL GROOMED	WEAPONS <input type="checkbox"/> CUTTING INST. <input type="checkbox"/> HAND/FEET <input type="checkbox"/> REVOLVER <input type="checkbox"/> RIFLE <input type="checkbox"/> SEMI AUTO <input type="checkbox"/> SHOTGUN <input type="checkbox"/> SIMULATED <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER:						
SUSPECT VEHICLE SUSPECT # _____		YEAR	MAKE	MODEL	BODY TYPE						
					COLOR						
				LICENSE/VIN							
				STATE							
ADDITIONAL IDENTIFIERS: <input type="checkbox"/> LOWERED <input type="checkbox"/> RAISED <input type="checkbox"/> SPECIAL PAINT <input type="checkbox"/> SPECIAL WHEELS <input type="checkbox"/> SUN ROOF/T-TOP											
R/O'S NAME (LAST, FIRST, MIDDLE) <input type="checkbox"/> SAME AS VICTIM # _____		ADDRESS		CITY/STATE	ZIP						
				DAMAGE TO VEHICLE							
SUSPECT VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> LEFT AT SCENE <input type="checkbox"/> RELEASED AT SCENE <input type="checkbox"/> HELD F/PRINTS <input type="checkbox"/> PRINTED											
OFFICER'S NAME <u>LOPEZ</u>		ID NUMBER <u>2228</u>	DATE <u>6-14-04</u>	SHIFT/DAYS OFF <u>ROBBERTY</u>	SUPERVISOR REVIEW						
					ID NUMBER						
					DATE						
				PG ____ OF ____							

SUPD SAN JOSE POLICE DEPARTMENT 201 W. Mission Street San Jose, CA 95110 277-4261		CASE NO. 04-007-0007	
		04-166-0212	
REPORT TYPE	<input type="checkbox"/> NARRATIVE	<input type="checkbox"/> SUPPLEMENTAL	VICTIM LAST, First, Mid.
SUSPECT LAST, First, Mid.		CITY/ZIP	
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.			
ITEM#	QNTY	BY: <u>9342</u> PROPER (and/or NARRATIVE)	SERIAL # VALUE
ITEM TYPE BRAND MODEL # SIZE COLOR MARKS ETC.			

Associated case 04-007-0007

DATE: 7/28/08
IDENTIFICATION SECTION

On 01-07-04 at approx. 0010hrs a carjacking / assault with a deadly weapon (04-007-0007) occurred in the driveway 1658 Virginia Ave, San Jose. The victim (cab driver) picked up the suspect outside the 7-11 store located at Bascom and Fruitvale. The suspect gave directions to the area of 1658 Virginia Ave. The suspect exited the cab and the victim followed to get his money. The suspect removed a knife and pointed it at the victim. The victim backed away and the suspect jumped into the cab. The suspect started the cab and the victim tried to confront the suspect. The suspect backed up the cab and hit the victim with the cab door. The victim was dragged a short distance and the suspect stopped. The suspect drove forward and hit the victim again. The suspect fled the area with the cab. The victim gave suspect description to police and was transported to the hospital by ambulance.

On 01-07-04 at approx. 0218hrs police were dispatched to a suspicious person call at [REDACTED]. Officer Marchetti # 3812 was dispatched to the incident. Officer Marchetti noted the suspicious person call matched the BOL for the carjacking suspect. The suspect was arrested and subsequently identified by the victim at the hospital.

Officer Marchetti contacted victim Garduno, Joseph (suspect's brother) after the suspect was in custody. Garduno told Officer Marchetti he was outside with a friend in the friend's vehicle. Suspect Gutierrez approached him when he was leaving and swung a knife at him. Garduno was not sure if the suspect intended to hit him or the vehicle. Garduno feared the suspect was swinging the knife at him. The suspect scrapped the vehicle with the knife. Garduno was driving off and the suspect kicked the truck and yelled out "you mother fucker".

On 02-19-04 at approx. 1920hrs Garduno, Joseph called me per my request. Garduno told me the suspect was his brother. Garduno gave a statement about the prior incident. The day of the incident Garduno wanted to leave with his buddy. Garduno tried to leave and the suspect pulled out knife. Garduno and his friend backed out and the suspect hit the window, scratched the door, kicked the door then stabbed the hood. The suspect said he was going to kill them so they drove off. The suspect chased them to the corner of the street so they drove off. Garduno called his sister about the incident but she had already called 911. Garduno returned and parked across the street and the police were there.

On 06-10-04 I contacted Garduno, Joseph for follow up. I asked Garduno about the knife that the suspect had the day of the above incident. Garduno told me the knife was a small folding type knife. He used his thumb and index finger to give me an approx. measurement. Based on his approx. size the knifew was about 3-3 1/2 inches long.

OFFICER'S NAME/BADGE
Lopez #2728DAYS OFF/SHIFT
Robbery UnitUSE AS FORM 3A
USE AS FORM 3A

2004 JAN -7 AM 10:30

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 9340DATE: 7/28/08
IDENTIFICATION SECTION

County of Santa Clara
Crime Laboratory
Office of the District Attorney
1557 Berger Dr., Suite B-2
San Jose, California 95112
(408) 299-2224

Subject's Name	GUTIERREZ, MICHAEL		
Requested By	T. JENNER-JES	Badge #	3608
Agency	S.S.P.D.	Agency Case #	04-007-0061
Technologist Taking Sample	Thao Vy		
Charges	11550 hrs	Location	PPC

You are requested to obtain a specimen of blood, urine or breath from
the above named subject for the purpose of scientific analysis.

I 9340
(Officer's Signature)

Type of Specimen	Date of Sample	Time of Sample	Technologist's Case #
<input checked="" type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> Typing tube	4/7/04	11:25 am	CML

Observations

Eyes _____ Speech _____
Odors _____ Attitude _____

Coordination and Balance _____

General Comments

Left arm
Delay in mix, label, Zephine, H₂O

INDEX 10280

Technologist's Signature: Thao Vy
Distribution: White - Police Agency Yellow - Technologist Pink - Crime Lab

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		SJPD PROPERTY		CASE NO. <u>04 007 005</u>		<input type="checkbox"/> HEALTH HAZARD	
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM							
SOURCE LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		ADDRESS		CITY/STATE		ZIP	
<input type="checkbox"/> STATE OF CA		<input checked="" type="checkbox"/> SAN JOSE, CA		RES. PHONE #		PROP. ROOM CODE	
<u>S. GONZALEZ, MICHAEL D.</u>		<u>[REDACTED]</u>		<u>6130105</u>			
		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #		LOCKER	
				DOB			
		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #			
				DOB			
PROPERTY CODES D = DISPOSAL REQUEST E = EVIDENCE F = FOUND K = SAFEKEEPING O = UNDER OBSERVATION		<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I		<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5		LOCATION CODES L - \$ = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD	
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
<u>1</u>	<u>E</u>	<u>S</u>	<u>2</u>	<u>BOOTS</u>	<u>ADIDAS</u>		
<u>POLK, LACE UP BOOTS</u>		<u>ON (S)</u>					
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
<u>2</u>	<u>E</u>	<u>S</u>	<u>1</u>	<u>B-SHIRT HAT</u>			
<u>REDIGRN, 49FL B-SHIRT HAT</u>		<u>ON (S)</u>					
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
<u>3</u>	<u>E</u>	<u>S</u>	<u>1</u>	<u>BLU JEANS</u>	<u>LEVI</u>		
<u>LEVI STRAUSS BLU JEANS</u>		<u>ON (S)</u>					
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
<u>4</u>	<u>E</u>	<u>S</u>	<u>1</u>	<u>SHIRT</u>	<u>CHERRYH</u>		
<u>CHERRYH, WHT T-SHIRT</u>		<u>ON (S)</u>					
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
<u>5</u>	<u>E</u>	<u>S</u>	<u>1</u>	<u>FRANSEL</u>	<u>HILLOTINE</u>		
<u>BLU/WHT FRANSEL</u>		<u>ON (S)</u>					
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.							
AUTHORIZATION FOR RELEASE		DISPOSITION				DATE	TIME
		BY: <u>9340</u>					
		DATE: <u>7/28/08</u>					
IDENTIFICATION SECTION							
OFFICER'S NAME		ID NUMBER	PROPERTY CLERK	DATE/TIME	SUPR. RVW	DATE	PG <u>1</u> OF <u>2</u>
<u>[Signature]</u>		<u>3007</u>	<u>Uedna 9651</u>	<u>1/7/04</u>	<u>0025</u>		

RECORDS COPY

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		SJPD PROPERTY		CASE NO. <u>04-007-8007</u>		<input type="checkbox"/> HEALTH HAZARD	
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM							
SOURCE: LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		ADDRESS		CITY/STATE		ZIP	
S	GUTERREZ, MICHAEL		<input type="checkbox"/> STATE OF CA <input checked="" type="checkbox"/> SAN JOSE, CA		RES. PHONE #		PROP. ROOM CODE
					DOB		
					RES. PHONE #		
					DOB		
		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #		LOCKER	
		<input type="checkbox"/> SAN JOSE, CA		DOB			
				RES. PHONE #			
				DOB			
PROPERTY CODES D = DISPOSAL REQUEST E = EVIDENCE F = FOUND K = SAFEKEEPING O = UNDER OBSERVATION		<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I		<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5		LOCATION CODES L - \$ = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD	
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
6	E	S	1	KNIFE			
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION GRAY COLORED 3 1/2 KNIFE							
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	
DESCRIPTION							
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.							
AUTHORIZATION FOR RELEASE:		BY: <u>OPD</u>				DATE	TIME
OFFICER'S NAME		ID NUMBER	PROPERTY CLERK	DATE/TIME	SUPR. RVW	DATE	PG 2 OF 2
SANDERS / VANDER		2608 2607	MICHAEL GUTERREZ	1/17/08			

RECORDS COPY

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		SJPD PROPERTY		CASE NO. <u>04-007-0007</u>		<input type="checkbox"/> HEALTH HAZARD			
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM									
SOURCE LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		ADDRESS		CITY/STATE		ZIP			
<input checked="" type="checkbox"/> STATE OF CA <input type="checkbox"/> SAN JOSE, CA <input type="checkbox"/> SAN JOSE, CA	[REDACTED] [REDACTED] [REDACTED]		<input checked="" type="checkbox"/> SAN JOSE, CA <input type="checkbox"/> SAN JOSE, CA <input type="checkbox"/> SAN JOSE, CA		PROP. ROOM CODE [REDACTED]		LOCKER LOCKER LOCKER LOCKER		
					DOB				
					RES. PHONE #				
						RES. PHONE #			
						DOB			
						RES. PHONE #			
						DOB			
						RES. PHONE #			
						DOB			
PROPERTY CODES D = DISPOSAL REQUEST E = EVIDENCE F = FOUND K = SAFEKEEPING O = UNDER OBSERVATION		<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I		<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5		LOCATION CODES L - \$ = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD			
ITEM # <u>1</u> CODE <u>E</u> SOURCE <u>V</u> QTY <u>1</u> PROPERTY TYPE <u>Photo Line up</u> BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED <u>SJPD</u> VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION <u>PHOTO LINE-UP</u>									
ITEM # _____ CODE _____ SOURCE _____ QTY _____ PROPERTY TYPE _____ BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED _____ VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION _____									
ITEM # _____ CODE _____ SOURCE _____ QTY _____ PROPERTY TYPE _____ BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED _____ VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION _____									
ITEM # _____ CODE _____ SOURCE _____ QTY _____ PROPERTY TYPE _____ BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED _____ VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION _____									
ITEM # _____ CODE _____ SOURCE _____ QTY _____ PROPERTY TYPE _____ BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED _____ VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION _____									
ITEM # _____ CODE _____ SOURCE _____ QTY _____ PROPERTY TYPE _____ BRAND/MAKE _____ MODEL _____		SERIAL NUMBER _____ LOCATION COLLECTED _____ VALUE _____ LOC CODE _____ PROCESS EVIDENCE <input type="checkbox"/>		PROPERTY ROOM USE ONLY					
DESCRIPTION _____									
SAN JOSE POLICE DEPARTMENT I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL.									
AUTHORIZATION FOR RELEASE		DISPOSITION				DATE		TIME	
		BY: <u>93410</u>							
		DATE: <u>7/28/08</u>							
		IDENTIFICATION SECTION							
OFFICER'S NAME <u>S. J. [REDACTED]</u>		ID NUMBER <u>7202</u>		PROPERTY CLERK <u>1/1 [REDACTED]</u>		DATE/TIME <u>06/31</u>		SUPR. RVW	
								DATE	
								PG <u>1</u> OF <u>1</u>	

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		SJPD PROPERTY		CASE NO. 04-007-0007		<input type="checkbox"/> HEALTH HAZARD		
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM								
SOURCE LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		ADDRESS		CITY/STATE		ZIP		
PROPERTY CODES	<input type="checkbox"/> STATE OF CA		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #		PROP. ROOM CODE	
					DOB			
		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #		LOCKER		
				DOB				
		<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #				
						DOB		
D = DISPOSAL REQUEST E = EVIDENCE F = FOUND K = SAFEKEEPING O = UNDER OBSERVATION		<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I		<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5		LOCATION CODES L - \$ = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD		
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION								
1	E	O	1				PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION CASSETTE TAPE - STATEMENT LIONETTI ANTHONY (ORIGINAL)								
2	E	O	1				PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION VHS TAPE - STATEMENT LIONETTI ANTHONY (ORIGINAL)								
3							PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION								
4							PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION								
5							PROPERTY ROOM USE ONLY	
SERIAL NUMBER		LOCATION COLLECTED		VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>		
DESCRIPTION								
AUTHORIZATION FOR RELEASE				DISPOSITION BY: 984D			DATE	TIME
OFFICER'S NAME				ID NUMBER	PROPERTY CLERK	DATE/TIME	SUPR. RWV	DATE
LOOEF				2126	MEALINA 9650	10/30/04 1444		
							PG	OF

RECORDS COPY

REPORT TYPE CARTAKING		<input type="checkbox"/> SUPPLEMENTAL		SJPD PROPERTY		CASE NO. 04-007-0001		<input type="checkbox"/> HEALTH HAZARD	
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM									
SOURCE ✓		LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) LIWETT, ASTHONY			ADDRESS		CITY/STATE		ZIP
		<input type="checkbox"/> STATE OF CA			<input type="checkbox"/> SAN JOSE, CA			RES. PHONE #	PROP. ROOM CODE
								DOB	
DOB									
			<input type="checkbox"/> SAN JOSE, CA			RES. PHONE #			
						DOB			
PROPERTY CODES D = DISPOSAL REQUEST E = EVIDENCE F = FOUND K = SAFEKEEPING O = UNDER OBSERVATION		<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I				<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5		LOCATION CODES L - \$ = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD	
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
1	E	F	1	CLIPBOARD					
SERIAL NUMBER		LOCATION COLLECTED VEHICLE				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION From TAXI CAB									
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
SERIAL NUMBER		LOCATION COLLECTED				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION									
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
SERIAL NUMBER		LOCATION COLLECTED				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION									
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
SERIAL NUMBER		LOCATION COLLECTED				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION									
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
SERIAL NUMBER		LOCATION COLLECTED				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION									
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE		BRAND/MAKE		MODEL	
SERIAL NUMBER		LOCATION COLLECTED				VALUE	LOC CODE	PROCESS EVIDENCE <input type="checkbox"/>	PROPERTY ROOM USE ONLY
DESCRIPTION									
SAN JOSE POLICE DEPARTMENT THIS IS TO BE A TRUE COPY OF THE ORIGINAL. BY: 9340									
AUTHORIZATION FOR RELEASE				DISPOSITION				DATE	TIME
2004 DEC - 8 5:40 2004 DEC - 8 1400				DATE: 7/28/08 IDENTIFICATION SECTION					
OFFICER'S NAME R. LOPEZ		ID NUMBER 2728	PROPERTY 1000	CLERK #940	DATE/TIME 12/8/04	SUPR. RVW	DATE	PG ____ OF ____	

RECORDS COPY

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
VEHICLE REPORT
C. IP 180 (Rev. 2-99) OPI 061

NOTE: CHP 180 IS FURNISHED TO ALL PEACE
OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT SAN JOSE POLICE		LOCATION CODE	DATE / TIME OF REPORT 1-7-04 0010	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. 04-007-0067
LOCATION TOWED / STOLEN FROM VIRGINIA E. KING RD		ODOMETER READING	VIN CLEAR IN SVS? <input type="checkbox"/> YES <input type="checkbox"/> NO LIC. CLEAR IN SVS? <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED 3-31-04	
YEAR 95	MAKE CHEV	MODEL CAPRICE	BODY TYPE	COLOR YELLOW	LICENSE NO. 6E02258
VEHICLE IDENTIFICATION NO. 1G1BL52P1X1512116512519			ENGINE NO.	VALUATION BY <input type="checkbox"/> OFFICER <input type="checkbox"/> OWNER <input type="checkbox"/> 0-300 <input type="checkbox"/> 301-4000 <input type="checkbox"/> 4001+ <input type="checkbox"/> \$	

REGISTERED OWNER

☐ SAME AS R/O

LEGAL OWNER

YANOW CHALKER CAB CO. INC.**615 BIRD AVE.****SAN JOSE, CA 95125**

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: **92410**☐ STORED☐ IMPOUNDED☐ RELEASED☒ RECOVERED - VEHICLE / COMPONENT

TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE)

DATE: **7/28/08**

STORAGE AUTHORITY / REASON

MATTOX TOW

TOWED TO / STORED AT

AIRBAG?

☐ YES ☐ NO☐ 1 ☐ 2

DRIVEABLE?

☐ YES ☐ NO☐ JUNK ☐ UNK

VIN SWITCHED?

☐ YES ☐ NO

CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	TIRES / WHEELS	CONDITION
WRECKED			SEAT (FRONT)			REGISTRATION			CAMPER			LEFT FRONT	
BURNED HULK per 431(c) VC			SEAT (REAR)			ALT. / GENERATOR			VESSEL AS LOAD			RIGHT FRONT	
VANDALIZED			RADIO			BATTERY			FIREARMS			LEFT REAR	
ENG. / TRANS. STRIP			TAPE DECK			DIFFERENTIAL			OTHER			RIGHT REAR	
MISC. PARTS STRIP			TAPES			TRANSMISSION						SPARE	
BODY METAL STRIP			OTHER RADIO			AUTOMATIC						HUB CAPS	
SURGICAL STRIP per 431(b) VC			IGNITION KEY			MANUAL						SPECIAL WHEELS	

RELEASE VEHICLE TO: ☐ R/O OR AGENT ☒ AGENCY HOLD ☐ 22850.3 VC

GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE)

DATE / TIME

NAME OF PERSON / AGENCY AUTHORIZING RELEASE

I.D. NO.

DATE

CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE.

SIGNATURE OF PERSON AUTHORIZING RELEASE

SIGNATURE OF PERSON TAKING POSSESSION

☒ STOLEN VEHICLE / COMPONENT☐ EMBEZZLED VEHICLE☐ PLATE(S) REPORT

DATE / TIME OF OCCURRENCE	DATE / TIME REPORTED	NAME OF REPORTING PARTY (R/P) LIONETTI, ANTHONY	DRIVER LICENSE NO. / STATE
LAST DRIVER OF VEHICLE SAME	DATE / TIME	ADDRESS OF R/P	TELEPHONE OF R/P ()

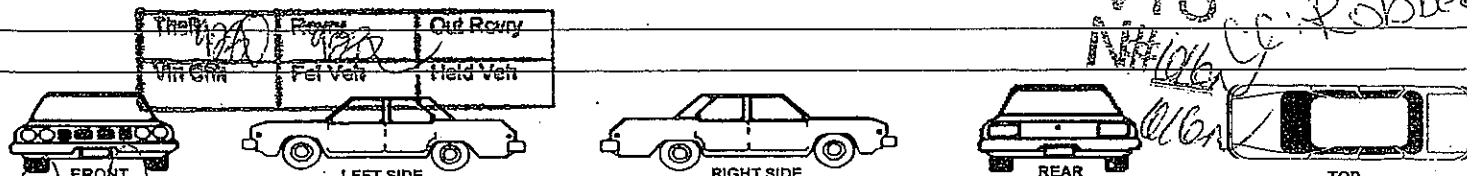
I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF PERSON MAKING REPORT

REMARKS

(LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS)

DRIVER'S NAME	ARRESTED / SECTION? <input type="checkbox"/> YES <input type="checkbox"/> NO	REPORTED BY	CARGO / TYPE? <input type="checkbox"/> YES <input type="checkbox"/> NO	VALUE \$ <input type="checkbox"/> BILL OF LADING ATTACHED
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HELD FOR EVIDENCE IN POLICE WAREHOUSE**IMPOUNDED 0122HRS NO REPORT DONE VTS****MAILED 1/16/04**

SIGNATURE OF OFFICER TAKING REPORT	I.D. NO. 2928	SUPERVISOR	REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22852 VC? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE NOTIFIED 1-7-04 4:00
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STOLEN / EMBEZZLED NARRATIVE

1. AREA <input type="checkbox"/> RURAL <input checked="" type="checkbox"/> URBAN		2. TAKEN FROM <input type="checkbox"/> STREET <input type="checkbox"/> PARKING LOT <input type="checkbox"/> GARAGE <input type="checkbox"/> DRIVEWAY <input type="checkbox"/> OTHER _____			3. REGISTRATION IN VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO				
4. WAS NEIGHBORHOOD CHECKED FOR VEHICLE, WITNESSES, CLUES, OTHER CRIMES? <input type="checkbox"/> YES <input type="checkbox"/> NO		5. PAYMENTS CURRENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		6. DOORS LOCKED? <input type="checkbox"/> YES <input type="checkbox"/> NO		7. KEYS IN VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO		8. ALL KEYS ACCOUNTED FOR? <input type="checkbox"/> YES <input type="checkbox"/> NO	
9. WHEN WAS VEHICLE LAST SERVICED?			10. WHERE?			11. IS THIS THE USUAL MECHANIC? <input type="checkbox"/> YES <input type="checkbox"/> NO			
12. RECENTLY LEFT IN PARKING GARAGE OR PARKING VALET SERVICE? <input type="checkbox"/> YES <input type="checkbox"/> NO			13. IF YES, WHERE?			14. VEHICLE EQUIPPED WITH ORIGINAL ENGINE? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
15. ORIGINAL TRANSMISSION? <input type="checkbox"/> YES <input type="checkbox"/> NO		16. ORIGINAL PAINT? <input type="checkbox"/> YES <input type="checkbox"/> NO		17. IF ANSWER TO 14, 15, OR 16 IS NO, PROVIDE ADDITIONAL INFORMATION, SERIAL NO., ORIGINAL COLOR, ETC.					
18. HAS VEHICLE BEEN PREVIOUSLY INVOLVED IN AN ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO			19. IF YES, HAS DAMAGE BEEN FIXED? <input type="checkbox"/> YES <input type="checkbox"/> NO			20. PARTS DAMAGED			
21. FACTORY EQUIPPED RADIO? <input type="checkbox"/> YES <input type="checkbox"/> NO			22. IF NO, MAKE AND SERIAL NO.			23. DOES VEHICLE HAVE LOCKING GAS CAP? <input type="checkbox"/> YES <input type="checkbox"/> NO			
24. IS VEHICLE FULLY INSURED? <input type="checkbox"/> YES <input type="checkbox"/> NO			25. NAME / ADDRESS OF INSURANCE COMPANY						
26. NAME / ADDRESS OF NEAREST RELATIVE NOT LIVING WITH R/P									
27. IDENTIFYING MARKS, BUMPER STICKERS, ADD ON EQUIPMENT, ETC.									

28. SUSPECT NAME		DRIVER LICENSE NO. / STATE		ADDRESS	
HEIGHT	WEIGHT	EYES	HAIR	MISC.	

RECOVERY NARRATIVE

29. NAME, DATE AND CASE NUMBER OF REPORTING AGENCY					
30. AREA RECOVERED <input type="checkbox"/> RURAL <input type="checkbox"/> URBAN		31. DESCRIPTION OF RECOVERY AREA		32. RECOVERY <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL	
33. ANY EVIDENCE LOCATED? <input type="checkbox"/> YES <input type="checkbox"/> NO		34. WITNESSES, CLUES AND OTHER CRIMES		35. HAVE MISSING, IDENTIFIABLE PARTS BEEN ENTERED IN SVS? <input type="checkbox"/> YES <input type="checkbox"/> NO	

COMPONENT RECOVERY

36. DESCRIPTION	37. SERIAL NO.
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NARRATIVE

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 93412

DATE: 7/28/08
IDENTIFICATION SECTION

SEARCHED	INDEXED	SERIALIZED
FILED	FILED	FILED

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
VEHICLE REPORT
CHP 180 (Rev. 2-99) OPI 061

NOTE: CHP 180 IS FURNISHED TO ALL PEACE
OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT SAN JOSE A.A.		LOCATION CODE M3	DATE / TIME OF REPORT 1/10/08 0108	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. 04-007-0007
LOCATION TOWED / STOLEN FROM MARBOREY / VOLUNTER		ODOMETER READING 343807	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO LIC. CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED	LOG NO.
YEAR 95	MAKE Chev	MODEL CAPRICE	BODY TYPE 4dr	COLOR ORANGE	LICENSE NO. 6E02258
VEHICLE IDENTIFICATION NO. 1G1BL52PXSRL165259			ENGINE NO.	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER <input type="checkbox"/> 0-300 <input type="checkbox"/> 301-4000 <input checked="" type="checkbox"/> 4001+ <input type="checkbox"/> \$	ONE MONTH / YEAR <input checked="" type="checkbox"/> TWO
REGISTERED OWNER			LEGAL OWNER		
YELLOW CHECKER CAB,			<input checked="" type="checkbox"/> SAME AS R/O		
615 BIRD AVE					
SAN JOSE, CA 95125					

<input checked="" type="checkbox"/> STORED		<input checked="" type="checkbox"/> IMPOUNDED		<input type="checkbox"/> RELEASED		<input checked="" type="checkbox"/> RECOVERED - VEHICLE / COMPONENT							
TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE) MATOS TOWING 670 N. KING Rd. 259-2000						STORAGE AUTHORITY / REASON 22655.5							
TOWED TO / STORED AT PROPERTY STORAGE / MARIQUA		AIRBAG? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> 1 <input type="checkbox"/> 2	DRIVEABLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> JUNK <input type="checkbox"/> UNK		VIN SWITCHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO								
CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	TIRES / WHEELS	CONDITION
WRECKED			SEAT (FRONT)	/		REGISTRATION			CAMPER			LEFT FRONT	OK
BURNED HULK per 431(c) VC			SEAT (REAR)	/		ALT. / GENERATOR	/		VESSEL AS LOAD			RIGHT FRONT	
VANDALIZED			RADIO	/		BATTERY	/		FIREARMS			LEFT REAR	
ENG. / TRANS. STRIP			TAPE DECK	/		DIFFERENTIAL	/		OTHER			RIGHT REAR	↓
MISC. PARTS STRIP			TAPES	/		TRANSMISSION	/					SPARE	OK
BODY METAL STRIP			OTHER RADIO	/		AUTOMATIC	/					HUB CAPS	NONE
SURGICAL STRIP per 431(b) VC			IGNITION KEY	/		MANUAL	/					SPECIAL WHEELS	NONE
RELEASE VEHICLE TO: <input type="checkbox"/> R/O OR AGENT <input checked="" type="checkbox"/> AGENCY HOLD <input type="checkbox"/> 22850.3 VC		GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE) 127 MIKE						DATE / TIME 1/7/08					
NAME OF PERSON / AGENCY AUTHORIZING RELEASE ROBERT		I.D. NO.		DATE		CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE.							
SIGNATURE OF PERSON AUTHORIZING RELEASE						SIGNATURE OF PERSON TAKING POSSESSION							

<input type="checkbox"/> STOLEN VEHICLE / COMPONENT		<input type="checkbox"/> EMBEZZLED VEHICLE		<input type="checkbox"/> PLATE(S) REPORT	
DATE / TIME OF OCCURRENCE		DATE / TIME REPORTED		NAME OF REPORTING PARTY (R/P)	
LAST DRIVER OF VEHICLE		DATE / TIME		ADDRESS OF R/P	
I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.		SIGNATURE OF PERSON MAKING REPORT			

REMARKS (LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS)		SAN JOSE POLICE DEPARTMENT	
DRIVER'S NAME	ARRESTED / SECTION? <input type="checkbox"/> YES <input type="checkbox"/> NO	REPORTED BY	I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL - BILL OF LADING ATTACHED

BY: **9340**

DATE: **7/28/08**
IDENTIFICATION SECTION

FRONT		LEFT SIDE		RIGHT SIDE		REAR		TOP	
SIGNATURE OF OFFICER TAKING REPORT M. Y. BARRA		I.D. NO. 3826	SUPERVISOR		REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22852 VC? <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE NOTIFIED		



STOLEN / EMBEZZLED NARRATIVE

1. AREA <input type="checkbox"/> RURAL <input checked="" type="checkbox"/> URBAN		2. TAKEN FROM <input type="checkbox"/> STREET <input type="checkbox"/> PARKING LOT <input type="checkbox"/> GARAGE <input type="checkbox"/> DRIVEWAY <input type="checkbox"/> OTHER			3. REGISTRATION IN VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
4. WAS NEIGHBORHOOD CHECKED FOR VEHICLE, WITNESSES, CLUES, OTHER CRIMES? <input type="checkbox"/> YES <input type="checkbox"/> NO		5. PAYMENTS CURRENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		6. DOORS LOCKED? <input type="checkbox"/> YES <input type="checkbox"/> NO		7. KEYS IN VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO
9. WHEN WAS VEHICLE LAST SERVICED?		10. WHERE?			11. IS THIS THE USUAL MECHANIC? <input type="checkbox"/> YES <input type="checkbox"/> NO	
12. RECENTLY LEFT IN PARKING GARAGE OR PARKING VALET SERVICE? <input type="checkbox"/> YES <input type="checkbox"/> NO		13. IF YES, WHERE?			14. VEHICLE EQUIPPED WITH ORIGINAL ENGINE? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK	
15. ORIGINAL TRANSMISSION? <input type="checkbox"/> YES <input type="checkbox"/> NO		16. ORIGINAL PAINT? <input type="checkbox"/> YES <input type="checkbox"/> NO		17. IF ANSWER TO 14, 15, OR 16 IS NO, PROVIDE ADDITIONAL INFORMATION, SERIAL NO., ORIGINAL COLOR, ETC.		
18. HAS VEHICLE BEEN PREVIOUSLY INVOLVED IN AN ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		19. IF YES, HAS DAMAGE BEEN FIXED? <input type="checkbox"/> YES <input type="checkbox"/> NO		20. PARTS DAMAGED		
21. FACTORY EQUIPPED RADIO? <input type="checkbox"/> YES <input type="checkbox"/> NO		22. IF NO, MAKE AND SERIAL NO.		23. DOES VEHICLE HAVE LOCKING GAS CAP? <input type="checkbox"/> YES <input type="checkbox"/> NO		
24. IS VEHICLE FULLY INSURED? <input type="checkbox"/> YES <input type="checkbox"/> NO		25. NAME / ADDRESS OF INSURANCE COMPANY				
26. NAME / ADDRESS OF NEAREST RELATIVE NOT LIVING WITH R/P						
27. IDENTIFYING MARKS, BUMPER STICKERS, ADD ON EQUIPMENT, ETC.						

SAN JOSE POLICE DEPARTMENT
I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL.

BY: 84N

28. SUSPECT NAME		DRIVER LICENSE NO. / STATE		ADDRESS	
HEIGHT	WEIGHT	EYES	HAIR	DATE <u>7/28/08</u>	
IDENTIFICATION SECTION					

RECOVERY NARRATIVE

29. NAME, DATE AND CASE NUMBER OF REPORTING AGENCY <u>SAN JOSE P.D.</u> <u>04-007-0007</u>		
30. AREA RECOVERED <input type="checkbox"/> RURAL <input checked="" type="checkbox"/> URBAN	31. DESCRIPTION OF RECOVERY AREA <u>WET, STREET, LIGHT</u>	32. RECOVERY <input checked="" type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL
33. ANY EVIDENCE LOCATED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	34. WITNESSES, CLUES AND OTHER CRIMES	35. HAVE MISSING, IDENTIFIABLE PARTS BEEN ENTERED IN SVS? <input type="checkbox"/> YES <input type="checkbox"/> NO

COMPONENT RECOVERY

36. DESCRIPTION	37. SERIAL NO.
-----------------	----------------

NARRATIVE

SAN-1-7-04 @ APPROX 0100 A CAR JACKING OCCURRED
IN THE AREA OF KING / VIRGINIA IN SAN JOSE. RESPONDING
OFFICER CIRCULATED THE AREA OF LOCATED THE
ABOVE VEHICLE ABANDONED @ THE CORNER OF
MCCREARY / VOLLMER IN SAN JOSE, APPROX 1/2
MILE FROM WHERE THE CAR JACKING OCCURRED.
 latent prints were lifted and photos were
taken from the car as evidence, the
suspect is still at large.

DECLARATION OF ELECTRONIC SERVICE

Gutierrez v. Yates, Case No. C 07-3668 RMW (PR)

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

On September 15, 2008September 15, 2008, I served the following document(s):

TRAVERSE OF PETITIONER MICHAEL DAVID GUTIERREZ TO RESPONDENT'S ANSWER TO ORDER TO SHOW CAUSE

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

EDMUND G. BROWN JR., Esq.	Attorneys for Respondent
Attorney General of the State of California	
DANE R. GILLETTE., Esq.	
GERALD A. ENGLER., Esq.	
GREGORY A. OTT., Esq.	
ALLEN R. CROWN., Esq.	
455 Golden Gate Avenue, Suite 11000	
San Francisco, CA 94102-7004	
Telephone: (415) 703-5847	
Fax: (415) 703-1234	

The documents were served by the following means:


☒ **(BY COURT'S CM/ECF SYSTEM)** Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2008September 15, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed on September 15, 2008 at Los Angeles, California.

Robert Mendosa
Type or Print Name


Signature

DECLARATION OF ELECTRONIC SERVICE

Gutierrez v. Yates, Case No. 5:07-CV-03668-RMW